The Color Bind (getting it wrong on CCRI) reviewed by David Faustman

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A *California Political Review* debate

Resolved:
Proposition 227
deserves a 'yes' vote
Affirmative: Gloria Matta Tuchman
Negative: Peter Ford

The Capps/Bordonaro Debacle
by Richard Ferrier

Who ya gonna call?
Jane Harmon's spectral constituents by Leon McKinney

Enticing the Muses
Why has conservatism lost the ability to inspire?
by James Bemis

Keeping the Communications Revolution at Bay
Why monopolies still control your local phone service
By Michael S. Fredenburg

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Judges' War on Property Rights
By Gideon Kanner
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By Steve Baldwin

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Reviewed by David F. Faustman

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CORRESPONDENCE

CPR's Michael Capizzi Debate

I ENJOYED your debate between Edward R. Jagels and Leon McKinney about Orange County District Attorney Mike Capizzi (*CPR*, March/April 1998). Jagels had obviously been briefed by Capizzi staff, because his information was wrong.

For example, Jagels contends Maureen Werft had registered to vote at a friend's home in order to vote for Scott Baugh. For this alleged ballot box stuffing, she was charged with two felonies and her financial life destroyed. Sorry Ed, your pals in Capizzi's office lied to you, too. Werft had never met Baugh when she registered at her friend's house. She did not work on Allen's recall or Baugh's campaign. She was in Sacramento, temporarily she thought. So, having run for city council in Huntington Beach, she wanted to remain a registered voter there. By the way, it is not illegal for a state employee, which is what Werft was, to vote in her home district. Capizzi wasted enormous resources to force Werft into a plea bargain. Finally, out of money, she gave in.

Even Jagels can't justify the heavy-handed attack on Republicans for minor offenses when juxtaposed to Capizzi's miserably weak response to the use of illegal votes to steal the election in Orange County's 46th Congressional District. Why was Capizzi so lenient on *Hermandad*, granting its top man immunity from prosecution? It has all the appearances of political deal-making at its worst. Capizzi has, in fact, corrupted his office by injecting politics into his work more than any other DA in the state. He is one of the few who insists on keeping the prosecutorial power in his hands rather than sending applicable political cases to the California Fair Political Practices Commission (FPPC). If Baugh's case had been sent to the FPPC, Baugh would have received a slap on the wrist. Instead, Capizzi is out to destroy him, even as the DA lets off buddies with far worse financial errors than Baugh's. Why? Because Capizzi is licking the filthy feet of the liberal-left *Los Angeles Times*, which has covered up his errors and puffed him repeatedly.

Finally, Mike Capizzi made many of the same errors in his paperwork for which he charged Republicans with felonies. His weak response was to say his paperwork was consistent with the "spirit" of the law. Others just don't have the spirit. Capizzi is a rotten law enforcement officer who puts his judgment over the FPPC. He has politically corrupted his office and proven himself an enemy of Republicans.

Dana Rohrabacher
Member of Congress

ACCORDING TO the House Oversight Committee, 4,402 non-citizens registered to vote in the 46th CD in 1996. According to Secretary of State Bill Jones, 2,474 of those people voted in the Dornan/Sanchez election. It is a felony either to register or vote if you are not a citizen. Why has Capizzi done nothing? *Hermandad* officials admitted many "mistakes." Witnesses testified that non-citizens were cajoled to register as and vote for Democrats, particularly for Loretta Sanchez. "There is no question there was fraud in this election," the *Los Angeles Times* quoted House Oversight Committee Chairman Bill Thomas saying. "The question is how much."

Rhonda Carmony, after being forced to borrow funds to pay more than $250,000 in legal costs, admitted that one person signed a paper she circulated, containing only one signature, in which the candidate did not sign the affidavit personally. That was it. A jury, after examining the DA's evidence, refused to find Carmony guilty of anything. Undeterred, Capizzi refiled the case. Contrast that with his handling of *Hermandad*. Capizzi will go down as Orange County's most unethical or incompetent DA.

Michael Schroeder, chairman,
Shawn Steel, treasurer,
California Republican Party

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AS FOUNDER and former secretary of the Fullerton Recalls Committee, I respond to Mr. Jagels' statement that Ann York's failure to schedule the recall replacement election "was a purely civil matter, over which the district attorney had no authority." That is false. In a letter to Senator John Lewis, the Legislative Counsel stated that the apparent derogation of electoral duties appeared to be felonious elections fraud. Even were elections fraud narrowly restricted to ballot counting matters and not applicable to failures to schedule elections, York's dereliction would still be prosecutable under Government Code §1222, which makes generic derelictions by public officials misdemeanors.

Mr. Jagels' language, "purely a civil matter," is telling. In December 1994 at the start of the Great Bankruptcy in Orange County, District Attorney Michael Capizzi admitted to the *Los Angeles Times* that he had read an internal audit report that criticized former Orange County Treasurer Bob Citron for breaking the law by making several illegal investments. Capizzi said Citron's violations were "purely a civil matter." But after I heavily publicized §1222 on behalf of the Orange County Committees for Correspondence, Capizzi changed his story. He was quoted in an *Orange County Register* interview saying he had never read the audit report in question. Section 1222 codifies and continues a provision of ancient common law. An old maxim says "when a writ of mandate issues, the non-corrupt public prosecutor investigates a crime." Let *CPR's* readers draw their own conclusions as to why Jagels tries to convince them that willful derelictions by governmental officials are "purely a civil matter."

Snow Hume
Fullerton

I AGREE with Jagels that judging Capizzi on "political criteria" is "worrisome," but Capizzi's obsession with political prosecutions allows no other choice. Capizzi, trumpeting his political trials, raises money from Beverly Hills liberals and "mainstream Republicans" (who think conservatives are "extremists" by definition), but when someone like me starts slamming him, Jagels and the rest of the *Capizzistas* shout "no politics, no politics." Jagels discusses six issues:

(1) Maureen Werft — It's crystal clear to me Capizzi selectively prosecuted Werft because she refused to help Capizzi get Scott Baugh. She would not lie to the grand jury *à la* Baugh's campaign treasurer, Dan Traxler. Capizzi ignored dozens of cases of people voting illegally from business addresses in the same district Werft voted in, then, when we caught him in 1996, the county counsel stonewalled efforts to get records released (see my article in the July/August 1996 *CPR*).

(2) Scott Baugh — Baugh's indictments were not thrown out because of a "highly arcane legal point." Capizzi's abuses of the grand jury system, along with his thuggish effort to blackmail Judge Smith, led to legislation sponsored by Baugh (AB 377 and AB 378) that in the future will allow us to prosecute Capizzi or any other brown shirt DA who tries doing what Capizzi did in the Baugh case. Jagels brings up Linda Moulton-Patterson. Yes, I'm the one who filed the complaint against LMP. But, after months of getting drones of "the investigation is continuing" from Assistant DA John Anderson in response to my queries (while reading daily leaks about Capizzi's persecution of Baugh and company), I suspected Capizzi was sitting on my complaint. So I started interviewing signers of LMP's papers myself and threatened to file a federal civil rights lawsuit against Capizzi and his office. A few weeks later LMP pleads guilty. Gee, what do you think?

(3) Fullerton City Clerk Ann York — The state's legislative counsel, responding to state Senator John Lewis' request, issued an opinion July 1, 1994, stating unequivocally that York should have called the election without delay. The counsel also discussed the penalty York could face: "Every person charged with the performance of any duty under the provision of any law of California relating to elections who willfully neglects or refuses to perform it, or, who, in his or her official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of those laws, is punishable by fine not exceeding $1,000 or by imprisonment in the state prison for 16 months or two or three years, or by both." In other words, we're talking about a possible felony. If Jagels really thinks felonies are "purely civil matters," another DA may need to go.

(4) Tustin Unified School District — Capizzi's reluctance to bother the liberal government establishment is exemplified by what Supervising DA Guy Ormes (who led the Baugh prosecution), told 174 campaign manager Ken Khachigian: "We have spoken to the attorney for the TUSD about the potential problems with this type of conduct, and do not expect any similar activities in the future." How nice.

(5) *Hermandad* — Jagels wants us to believe that despite Himalayas of evidence of umpteen felonies committed by *Hermandad*, Nativo Lopez, Loretta Sanchez, and her campaign manager John Shallman, Capizzi simply could not get an indictment and so had to walk away. Bull. How come Mr. "Honest Elections Are the Cornerstone of Democracy" didn't file charges directly? Answer: he wants the liberal and Hispanic vote in the AG race.

(6) Orange County Bankruptcy — Capizzi did indeed have "authority over the investment decisions" made by Bob "Vegas" Citron and his co-conspirators: their "decisions" were illegal, and so when their Ponzi scheme collapsed Capizzi prosecuted them. But as long as Citron was producing extra cash for the county — including Capizzi — to spend, Capizzi managed never to receive the county auditor-controller's report that should have caused Capizzi to investigate.

Leon McKinney
St. Louis

(Editor's note: CPR invited District Attorney Jagels and other supporters of District Attorney Capizzi to contribute letters following up on last issue's debate. Jagels declined and no other responses were received.)

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EDUCATION

Open Letter to Alan Bersin

Why California's second largest school district is in dire need of radical overhaul.

STEVE BALDWIN

CONGRATULATIONS ON your recent selection as Superintendent of the San Diego Unified School District (SDUSD). I was surprised to hear that a U.S. Attorney with zero education background was selected, but this is a plus in my view since you have no allegiance to the failed practices and theories embraced by much of the education establishment. I make this an open letter because the public should know why California's second largest school district is in dire need of radical overhaul. Furthermore, my suggestions can probably be applied to most of California's school districts. As you surely know by now, California is at bottom or near bottom in math and reading on the NAEP tests, but the reasons why this is so has little to do with a lack of funds. Indeed, the country's highest academic performing states have the lowest per-pupil spending and *vice versa.* Instead, it has more to do with using research-proven methodology and teaching practices, areas you have authority to affect.

I write as author or co-author of some of the most radical reforms to hit our schools in a decade: class-size reduction, the state-wide test, phonics training, and academics standards. I have spent most of my three years in the Legislature searching for methodologies and models that improve academic performance. As a product of SDUSD and the son of public school teachers, I pray and hope you have the courage to turn things around.

The essence of nearly all of my criticism is that SDUSD, instead of using methods that work, embraces an entrenched culture that promotes failed fads. SDUSD has even celebrated failure. The district recently gave an award to Hoover High principal Doris Alvarez, even though during her tenure, scores at Hoover High actually declined. Most of the advice I give you will be unpopular with the education community, but these are the same folks who got us into the predicament we are in, so listen to them at your own risk.

1) Train your elementary teachers to teach phonics properly. Most teach whole language and do not understand how to teach phonics because our teacher preparation programs have not taught systematic phonics for at least a decade. Legislation I authored set aside funds to retrain our teachers to teach phonics systemically and explicitly, but SDUSD used these funds to hire a prominent whole language teacher trainer from New Zealand, the birthplace of whole language now infamous for dismal reading scores. What passes for a "balanced reading curricula" is usually a whole language approach with only a token treatment of phonics. Aside from the dismal reading scores that SDUSD likes to ignore, additional evidence that such an approach is disastrous is the massive number of SDUSD students requiring remedial reading courses in college.

And don't let the SDUSD staff tell you that broken families, income level, poverty, high immigrant level, etc. are the reasons for the district's dismal reading scores. Some of the state's most successful reading programs are from schools with demographics similar to SDUSD's. I urge you to visit the Inglewood District's elementary schools to witness the results of the best district-wide phonics program in the state. You should also visit Dr. Sam Swanson at the south San Diego County Sweetwater Union High School District. Dr. Swanson has implemented, with astonishing results, the county's only district-wide phonics-based remedial program targeted at seventh graders victimized by various teaching fads, many of whom were on the verge of dropping out.

THE RESEARCH in favor of phonics is indisputable. It is time SDUSD emerge from the Stone Age: use its "in-services" to train teachers to teach phonics and adopt phonics-based reading texts. It is no secret SDUSD's reading texts do not conform to the most reliable reading research, the spirit and intent of the recently passed state legislation, and, most importantly, the state's solid new language arts standards. The recently-adopted SDUSD language arts standards are weak because district staff strongly opposed aligning SDUSD standards to the very clear and specific state language arts standards. Incredibly, one of

CPR education correspondent Assemblyman Steve Baldwin (A.D. 77) was Education Committee chairman in 1996.

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SACRAMENTO SPECTATOR

To coin a phrase: now is the winter of our discontent made glorious summer by a huge budget surplus. The economic rising tide has lifted all boats — just as Ronald Reagan said it would — even the rusty old keel of the good ship California. The "trickle up theory" — what supply side economics really is — is working in California. Thanks to Republican tax cuts in Washington and Sacramento, our people are more prosperous. Therefore — *mirabli dictu!* — tax revenues are at record levels. There is so much money, even Tom McClintock and Pete Wilson can't find much to fight over.

McClintock is pushing the swell idea of eliminating auto registration taxes, leaving only a basic fee (about $40 probably — required to run DMV functions) to be collected at the annual registration renewal time. At this writing, Wilson is even considering supporting this measure.

Legislative Republicans and Wilson are also hanging tough (at least momentarily) in negotiations with the state Bar. The Bar has become a thoroughly odious and diligent servant of far left and politically correct causes. Wilson vetoed re-authorization of its dues-collecting authority last year, and the Bar is just about out of money. Petey-boy and Legislative Republicans have it within their power to drive a stake through the heart of a major liberal power center. Killing the state Bar would be a blow for freedom felt around the country. Let's hope they stick by their guns.

And speaking of guns, Republican Jello-spines in the Legislature (the names McPherson, Cuneen, and Kuykendall come to mind) continue to

go out of their way to thumb their noses at the gun lobby. McPherson isn't up for re-election until 2000. His anti-gun votes have become quite bizarre, isolating him from fellow Republicans. Sources speculate he has already decided not to run again and therefore doesn't mind accumulating a voting record to the left of Tom Hayden or Bill Lockyer on this basic constitutional issue.

Cuneen and Kuykendall, on the other hand, *do* face the voters this year. At least one pro-gun group wants to find a GOP incumbent to beat, even if it means electing an equally anti-gun Democrat. Keep your eyes on the two above-mentioned worthies. A word to Messrs. McPherson, Cuneen, or Kuykendall, quoting Betty Davis: "Fasten your seat belts, it's going to be a bumpy ride."

And speaking of bumpy rides, the Howard Jarvis Taxpayers Association seems to have lost some of its philosophical moorings. Your *Spectator* knows of one Assembly race where the choice was between a hardcore supporter of Proposition 13 and a county supervisor who voted to have his county join a suit to have 13 found unconstitutional — normally a slam-dunk for the Jarvisites.

But because one of their board members has ties to this supervisor (and possibly the supervisor's land developer pals) the Jarvis Association refused to endorse in the race. Their cowardice may well be the determining factor in sending yet another Republican "tax and spend" political careerist to the Legislature. Howard must be spinning wildly in his grave — don't be surprised if you start hearing of Howard Jarvis sightings!

And with that, your *Spectator* must adjourn to a super-secret meeting up here of a super-secret, para-military drinking and singing society. Promise to fill you in on the details next issue.

— *A. P. C.*

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SDUSD's few reading success stories — a school that uses an explicit phonics program called Open Court — has not been replicated anywhere within SDUSD and was not even considered as a model when developing the district's language arts standards.

2) Adopt a structured immersion approach to bilingual education. Ignore all the brouhaha about this issue and simply look for a model research shows is moving kids quickly to English fluency. SDUSD's approach has created generations of Hispanic graduates hardly able to read their diplomas. The model, which the bilingual establishment refuses to talk about, should be the heavily-Hispanic Garden Grove School District, where immersion has been a great success for four years. Replicating that success will anger SDUSD's influential bilingual establishment, but thousands of Hispanic parents will be thrilled that their children are finally learning the language necessary to succeed.

3) Despite all the heated rhetoric about teaching math, years of research have pretty much settled the main issue. If you want students to learn computational skills you must use math texts that teach computational skills. And even though SDUSD recently completed writing decent math standards for the district, "SDUSD math texts," according to Mike Mckeown, founder of Mathematically Correct, "do not correlate to its own standards since most of them are [of the] warm and fuzzy, dumbed down, new new Math variety." District texts such as CPM and Mathland have led to declining math scores everywhere they are in use. Meanwhile, the most successful math text in the country, Saxon, is used nowhere in the district. (Saxon is the only math publisher that provides "before and after" math scores from every school district using its texts.) It is bizarre, but the poorer the record a textbook has, the more likely it is that SDUSD will be using it! I urge you to take research or performance data into account when making textbook decisions or, better yet, go visit the Saxon math program at San Pasqual Valley Union School District and witness the miracles taking place there.

4) If you want the involvement of parents, the SDUSD should quit violating their rights and undermining their authority. Parents are offended that they are called upon for bake sales, but when it comes to real

WHAT YOU HAVEN'T BEEN TOLD ABOUT GUN CONTROL

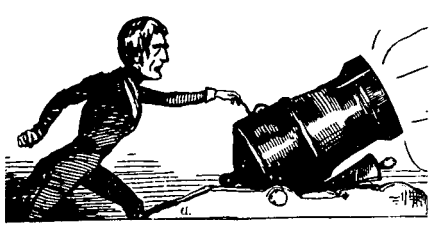
By WILLIAM E. SARACINO

Inspired by the even more than usually ill-informed, not to say hysterical, debates on repealing the Second Amendment that characterized last year's legislative session, this new regular feature adopts the novel approach of considering Facts about guns, gun control, and gun owners.

Banning those scary-looking guns.

The current item on the liberal elite's "Constitution shredding" list is banning "assault weapons." This is a good example of purposeful liberal deceit.

By definition, all guns fire either "semi-automatically," *i.e.,* you must pull the trigger each time you fire; or "fully automatically," *i.e.,* machine guns. Recent national surveys show 70 to 80 percent of the public thinks the "assault weapons" debate is about guns that are fully automatic. It is not, of course. Fully automatic weapons have been illegal since 1934. Undeterred by facts, the anti-gun mob is after "assault weapons" based not on whether they actually can fire fully automatically, but on whether they *look* like assault weapons. *That* is the grave threat the current "assault weapon" bill in the Legislature, AB 23, seeks to ban — scary-looking guns! Outlawing weapons *based mainly on physical appearance,* it would affect many standard hunting and sporting rifles.



Fortunately for the Los Angeles Police Department, AB 23 was not in effect during last year's North Hollywood bank robbery. Police who responded had to go down the street to a civilian gun store to borrow the weapons that eventually brought down the bad guys. Under AB 23, these weapons would have been illegal and therefore not at this gun store.

But the bank robbers had these weapons anyway you say. *Exactly.* Now listen up, Sarah. Having decided to murder, rape, or rob, few criminals will change their minds because to go ahead they will also have to violate a gun law. As my 9-year-old nephew says ..."Duh"!

We as a society are safer when law abiding citizens have the ability and means to protect themselves and their families. CPR

William E. Saracino is executive director of Gunowners of California.

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LEGISLATIVE FILE

State Senator Rob Hurtt's recent decision to step down as Republican Senate leader should not be allowed to pass without comment. Rob Hurtt is a rarity in Republican politics: a conservative who, in the words of the old challenge, is willing to "put his money where his mouth is."

He didn't sit back and curse the darkness. Using matches purchased with his own money, he lit every candle he could find that looked like a conservative candidate for the Legislature.

Frustrated with Sacramento GOP leaders, he ran for the Senate himself, and was quickly elected Republican leader. It is sad that he recently became frustrated enough with his fellow GOP Senators that he decided to throw in the towel as leader. For all his money and business acumen, Hurtt was unable to make silk purses of sows' ears.

An impatient man in a body that loathes quick action, he tried to lead a group that has more than its share of low-on-talent careerists (do the names Craven, Beverly, and Maddy ring a bell?), men who don't want to be led and gasp at the thought of using their campaign funds (let alone their own money) to elect a Republican majority.

This magazine admired Rob Hurtt's willingness to devote his "life, his fortune, and his sacred honor" to conservative politics long before he ran for the Senate. We hope he now has more time for family and golf, but also that he continues his political activity far beyond the reaches of his Senate District. The conservative movement desperately needs leaders like him. Thanks, Rob, for all you did and all you tried to do.

⁂ ⁂ ⁂

As a service to readers, *California Political Review,* which takes no position on ballot measures, herewith provides endorsements, pro and con, of June's initiatives by various California political organizations. The initials that follow stand for: California Republican Party (CRP), California Democrat Party (CDP), California Republican Assembly (CRA), California Republican League (CRL), Young Republican Federation of California (YRFC), California Federation of Republican Women (CFRW), American Civil Liberties Union (ACLU), Capitol Resource Institute (CRI), and Committee on Moral Concerns (CMC). Not all organizations have taken positions on all measures.

Proposition 219, Ballot Measures Uniform Application, **YES:** CRP, CDP, CRA, CFRW, CRI, CMC; **NO:** None. **Proposition 220,** Abolish Municipal Courts, **YES**: CDP; **NO:** CRP, CRA, CFRW, CRI, CMC. **Proposition 221,** Judicial Performance Commission, **YES:** CRP, CDP, CRA, CFRW, CRI, CMC; **NO:** None.

Proposition 222, Murder Punishment, YES: CRP, CDP, CRA, CRL, CFRW, CRI; NO: None. **Proposition 223,** School Administration Spending, **YES:** None; **NO:** CRP, CDP, CRA, YRFC, CFRW, CRI. **Proposition 224,** Engineering Contracts, **YES:** None; **NO:** CRP, CDP, CRA, CRL, CFRW, CRI, CMC.

Proposition 225, Term Limits, **YES:** None; **NO:** CDP, CRA, CFRW, CRI, CMC. **Proposition 226,** Permission on Union Dues for Politics, **YES:** CRP, CRA, CRL, YRFC, CFRW, CRI, CMC; **NO:** CDP, ACLU. **Proposition 227,** Instruction in English, **YES:** CRP, CRA, CRL, YRFC, CRI, CMC; **NO:** CDP, CFRW, ACLU. **CPR**

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involvement in substantive issues, they are avoided like the plague. What's worse is the prevalent SDUSD attitude that only school bureaucrats know what's best for the kids, even though these are the same people who pushed whole language, new new math, and cooperative learning! Just recently, Roger Hedgecock's radio show exposed the case of a family whose child was separated from his peers by SDUSD personnel and asked a series of highly invasive questions without the consent or knowledge of his parents. The child was asked "Are your parents divorced?," "Were you adopted?," "Do your parents attend church?" It is against the law for teachers to practice psychological counseling without a license, and even licensed school counselors should not invade a family's privacy. Many districts have lost lawsuits in this area of the law and you will be lucky if SDUSD does not lose a suit brought by this child's parents. Do what is right, not only for the principle of parental authority, but for liability reasons.

5) As with so many other issues, SDUSD is using failed approaches when it comes to sex education. Despite research that has demonstrated time and again the success of abstinence-based sex education, the SDUSD has decided to ignore the research and use the usual, "have sex with anyone, anytime" value-free approach. And people wonder why teen-age pregnancies continue to skyrocket. Believe it or not, there are public school districts elsewhere in the country using abstinence-based programs that have pregnancy rates about 1/10 of SDUSD's. In a San Marcos school district, an abstinence-based program called Teen Aid reduced teenage pregnancies from 150 a year to around 20. The question is: have you the guts to buck Planned Parenthood screaming hysterically that abstinence-based education violates church/state separation because abstinence is traced to the Bible? (No kidding, that's their argument.)

6) You have the authority to test teachers as a condition of hiring them. Make them meet a certain threshold on the same statewide test all students must take. Currently, SDUSD has many teachers who are not qualified to teach. Contrary to what some teachers think, passing the CBEST, an eighth-grade equivalency test, does not mean a teacher is qualified to teach. You also have the authority to reward good teachers with bonuses if their collective class score meets a certain threshold. Make teachers compete. Make school sites compete with each other. Connect finances to performance and academic improvement is inevitable.

7) Dump social promotion. One of the functions of the new statewide test is to help catch poor students before they are promoted completely beyond their depth, become disillusioned, and drop out. Use the test to determine who should be required to attend intensive summer school remedial courses in their deficient area before they proceed to the next grade.

OF COURSE you will make enemies if you carry out *any* of these reforms, but your job is to create students who can perform successfully in the world, not to make the education community happy. Currently, SDUSD fails students, parents, and taxpayers. You can change that. CPR

THE LAW

'Whatever It Takes'?

The Boy Scouts won, as they should have. But the devil lurks in the details. Ron George's lead opinion corralled only four votes. Why were there four separate concurring opinions?

MARK S. PULLIAM

IN REMARKS to reporters after his "State of the Judiciary" speech on March 5, 1998, Chief Justice Ron George said he will do "whatever it takes" to win his retention election in November, according to the *Los Angeles Times*. He meant, the context suggests, that he intended to raise funds and campaign aggressively, but this revealing sentiment also allows other possible interpretations. George's odd statement to reporters comes to mind when one reads Justice Stanley Mosk's concurring opinion in *Curran v. Mount Diablo Council,* the long-awaited case decided on March 23 involving a homosexual adult barred from a leadership position in the Boy Scouts. Mosk observed

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that the Court's opinions in *Curran* and the companion case *Randall* (involving two atheist boys who refused to recite the Scout Oath) — both written by Ron George — "apparently have as their object to salvage *Isbister* and *Warfield* at any cost." What is Mosk — George's antagonist in *American Academy of Pediatrics v. Lungren,* the parental consent case — talking about?

ISBISTER REFERS to a 1985 case in which the California Supreme Court — then under the leadership of Chief Justice Rose Bird — ruled that the Boys Club of Santa Cruz, a non-profit youth organization, was a "business establishment" subject to the Unruh Act. Accordingly, the Supreme Court held that it was illegal for the Boys Club to deny membership to girls. In *Curran* and *Randall,* Ron George's majority opinion "distinguished" *Isbister* by finding factual differences between the Boys Club and the Boy Scouts. Mosk and Justice Janice Brown, writing a separate concurring opinion in *Curran* and *Randall,* concluded that Isbister was wrongly decided and should have been *reversed.*

Indeed, *Isbister* was and remains a controversial decision. It was authored by Justice Joseph Grodin, who was thrown off the Court just a year later, along with Cruz Reynoso (who joined in Grodin's opinion) and Rose Bird, who concurred separately. Two justices, including Stanley Mosk, dissented in *Isbister.* Given this background, it is superficially puzzling why the Court in *Curran* and *Randall* did not simply overrule *Isbister* (especially since George's campaign committee has issued a press release bragging that he has "overturn[ed] numerous Rose Bird-era precedents").

The answer lies with *Warfield,* which is of a more recent vintage. *Warfield,* you see, was decided less than three years ago, in June 1995. It, too, was and remains a controversial decision. The Court in *Warfield* ruled that a private, non-profit country club funded primarily by dues paid by its members, whose facilities were restricted to its members and their invited guests, was a "business establishment" subject to the Unruh Act. Accordingly, the California Supreme Court held that it was illegal for the country club to deny membership to women. The *Warfield* decision was written by — guess who? — Ron George.

Warfield extended *Isbister,* already a ludicrous precedent, to the membership decisions of private social clubs, notwithstanding a lengthy dissent by Chief Justice Malcolm Lucas, which accused George's majority opinion in *Warfield* of judicial activism: "Our judicial role is to apply the law, not to make it. If the statute [the Unruh Act] is to be recast, the Legislature, and not this court must do so. *Because the majority usurps the legislative function and oversteps its judicial role, I am compelled to dissent."* In *Warfield,* Mosk ridiculed George's reliance on *Isbister* in these caustic terms: "The concept that a small 'swim and gym' club for boys is a 'business establishment' was incomprehensible when proffered by a majority of this court [in 1985], and it has not gained stature or even plausibility with the passage of time." (Although Mosk at the time concurred in the result in *Warfield,* he now recants that ruling and considers the result "unsound.")

The dirty secret about *Curran* and *Randall,* and the reason why George was able to line up only four votes for a result that all seven justices supported, is that under the standards set forth in *Isbister* and *Warfield,* the Boy Scouts *are* a "business establishment." What the concurring justices who refused to join George's *Curran* and *Randall* opinions are saying in an oblique and genteel way is that, in light of the Court's own (erroneous) precedents, "you can't get there from here." Brown's concurring opinion began with these words: " [T]he majority's analysis cannot sustain the result." Justice Kathryn Werdegar, putting it somewhat laconically in her separate concurring opinion wrote: "This case arose because our past decisions supported a respectable argument that the Boy Scouts is a 'business establishment.' . . . *Our prior precedents pointed to such a result."*

THIS EXPLAINS George's curious reluctance to overturn *Isbister* and *Warfield* in the Boy Scouts cases. However, his decision in *Warfield* handed him a dilemma. How is it possible to rule for the Scouts (a political necessity this election year) without losing face by admitting error in *Warfield?* The answer is a dizzying exercise in the semantic legerdemain in which activist judges have become strikingly proficient. In this genre, George's "reasoning" in the *Curran* and *Randall* decisions is a *tour de force:* an analysis that is intellectually dishonest and devoid of meaningful guidance to parties in other cases. Mosk's concurring opinion in *Curran* scolds the majority opinion written by George for its superficiality: "By proceeding as they do, they [the majority] render their own discussion vague in its outline and *ad hoc* at its core, and hence fail to give guidance for lawful conduct outside of court or for principled decision-making within."

How is the Boys Club, a non-profit youth organiza-

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tion, different from the Boy Scouts, also a non-profit youth organization? Both have a significant number of employees. Both own property and operate facilities. Neither is a "business" in any meaningful sense. How is a private country club's operation of golf and tennis "pro" shops open to the public — which was the "hook" George used to treat the club as a "business establishment" in *Warfield* — different from the Boy Scouts' operation of retail shops and the licensing of the use of its insignia? George's opinion in *Curran* dances around but never quite confronts this plainly central question. George says, in essence, "well, it's just different." In short, George's majority opinion is a jurisprudential failure. It reaches the right result, and is full of "sound bite" passages extolling the virtues of the Boy Scouts (handy for quoting in press reports), but lacks completely any intellectual rigor or over-arching principle.

For all the rhetoric he has spouted about "judicial independence," George could not bring himself to trim the Court's activist sails by declaring a simple, plain truth: that the Legislature went out of its way to specify "business establishments" in the Unruh Act precisely and obviously to leave non-profit organizations (with which First Amendment issues of free speech, thought, and association are more likely to arise) unfettered by its intrusive regulations. He might even have said, at a minimum, that the Act applies only to the furnishing of goods or services to the commercial public, but he did not. Werdegar, generally an ally of George, wrote in her separate opinion that "After three decades of decisions, including today's, addressing the question of whether particular entities are 'business establishments' subject to the [Unruh Act], a competent attorney in many foreseeable cases would not be able to advise a client with a reasonable degree of certainty whether the act applies." Justice Brown aptly summed it up when she said in her concurring opinion, "To put it bluntly, the law is a mess."

Ultimately, *Curran* and *Randall* are a victories *only* for the Boy Scouts — a sort of *ad hoc* exception to the Court's incoherent Unruh Act caselaw. Would the Girl Scouts qualify as a private organization rather than a "business establishment"? Other non-profit groups? Who knows? (But I wouldn't count on it, especially in non-election years.)

In *Curran* and *Randall,* George did what he had to do — rule in favor of the Boy Scouts but not alter the *status quo* by upsetting the California Supreme Court's chaotic precedents (including his own) in the process. By cutting and running rather than take on the Boy Scouts, George *did* defuse the explosive potential a ruling consistent with precedent would have caused. Senator Ray Haynes, leading a GOP panel considering whether to oppose George, pronounced the Boy Scouts ruling "one that shows appropriate judicial restraint." U.C. Berkeley law professor Stephen Barnett stated that the ruling "is a solid judicial performance and should have the incidental effect of buttressing the Court from right-wing attack."

In other words, if George's majority opinion was a cynical ploy, it worked. As *CPR* predicted (*see* "Shockingly Homogenous?", January/February 1998), George triangulated his way out of the Boy Scouts controversy, appeasing his GOP base without antagonizing — at least not seriously — his liberal admirers, chief among whom is law professor Gerald Uelmen (an outspoken defender of Rose Bird). Uelmen previously admonished George in an *L.A. Times* column for issuing a press release at the California Republican Party convention in February entitled "The Conservative Record of Chief Justice Ronald M. George." Uelmen chided George for masquerading as a conservative: "George is not perceived by the left or the center as a doctrinaire [*i.e.,* principled] conservative. He is widely viewed as a thoughtful judge who has risen above politics [*i.e.,* who has abandoned his GOP roots and now votes like one of us] and guided the Court to a moderate and centrist position [*i.e.,* to the left] on most issues." All he forgot was to say George had "grown in office."

WITH THE Boy Scouts ruling, George may think he has assured his victory in November, but he has not distinguished himself as a judge, and certainly not as an ideal conservative judge committed to the rule of law. As Justice Brown (who is such a judge) stated in her concurring opinion, the Ron George majority's failure to overrule *Isbister* and *Warfield* "reflects how far our jurisprudence has strayed from the plain meaning of the statute and apparent legislative intent."

By assigning the majority opinion in the Boy Scouts cases to himself — a high profile assignment that generated national news coverage — George has invited voters to scrutinize his decision as a benchmark of his performance as Chief Justice. When one reads the various opinions carefully, what sort of judicial philosophy emerges from George's showcase performance? At best, a pedestrian brand of muddled activism. At worst, expediency (only the headlines count; who reads concurring opinions?), arrogance (who cares about country clubs, anyway?), and hypocrisy (whatever it takes).

Has Ron George passed the test? You decide. CPR

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Motivation with a Bass Drum

Corporations now find rationality, professionalism, and reward insufficient. They supplement them with pop psychology from 'motivational speakers' — at fees up to $20,000 per pop.

WILLIAM R. ALLEN

I AM SOMETHING of a lone wolf. That does not mean I spend most of my time as a solitary predator stalking coeds. Rather, I observe, read, think, and write best when not in a crowd, whether or not the crowd is organized by cheerleaders.

Creativity, I have supposed, springs from individuality. The individual is the ultimate unit of thought, motivation, and decision making. Presumably, in a free and efficient society, we wish to exploit and clarify personal incentive and accountability.

None of this denies the significance of teams and societal coordination. But coordination is to be founded on mutual benefit. Each individual fulfills personal ends by using personal resources according to personal aspirations and criteria, all in a context of ground rules and procedures that channel such strivings so as to make people useful to each other. Obviously, there must be coordination within teams as well as within the community at large. Without coordination of the efforts of members of a team, there is no organization. Corporations are teams. Still, like other teams, they are composed of individuals doing their individual things. Workers work, managers manage, analysts analyze, decision makers decide, salesmen sell, accountants account. All these people require some intelligence, training, and tools — and their rewards are to be commensurate with their productivity, which strongly tends to inspire high productivity.

But reports in *The Wall Street Journal* and *Fortune* indicate that many glamorous corporations find rationality, professionalism, and reward insufficient. Each now strives to build a common, coagulating corporate culture. Family fealty and paternal partnership are required, it is said, to convert apathy into allegiance and productivity. So innate pride of workmanship and pay for performance are to be supplemented with pop psychology from "motivational speakers" at fees up to $20,000 per pop.

A recent *Los Angeles Times* feature story relates efforts of elite business firms to use "organized play" to seduce employees into "building teamwork" and "a sense of corporate identity." A famous commercial organization is now offering seminars intended to convert mere managers and supervisors into exhilarating motivational "coaches" of "goal-oriented teams."

Well, if representative corporate personnel have the cultural attainment and intellectual sophistication of high school football players, then pep talks of halftime nature and "creative play sessions" could be appropriate. We may hope that such "anecdotes, aphorisms, homilies, and platitudes," along with "spirited 'team cheers,'" can help — until we realize that, if such junk food for the psyche actually is helpful, we have a very large problem in the quality of corporate character.

Still, since there is a swelling market for "merchants of inspiration," perhaps I should offer my oratorical services. My high school had a great motivational cheer for football games, and we in the band boasted that — with the aid of the bass drum — we could make more noise than all the rest of the student body. For $20,000, I am willing to yell at business people. Of course, if I am to bring a band, complete with bass drum, the fee must be greater. CPR

William R. Allen, who actually does find cheerleaders quite fascinating, meditates in the UCLA Department of Economics.

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THE WORKING PRESS

The Keeper of the Pat Brown Flame

Former Sacramento Bee *editorials editor Peter Schrag's* Paradise Lost *captures much of the establishment wisdom about California's civic culture*

TIM W. FERGUSON

FOR 18 YEARS, Peter Schrag was editorial page editor of the *Sacramento Bee*, the keeper of Pat Brown's flame at the McClatchy flagship. Now he has published a book, *Paradise Lost,* that captures much of the establishment wisdom about California's civic culture: that it has been scorched by Proposition 13 and other ballot initiatives and now suffers from an underfunded, unrespected government driven by cynicism and opportunism. Well....

Schrag actually has a more well-developed and honest liberalism than many, and in the course of hundreds of pages has a chance to lay that out. But his refrain is familiar: we've succumbed to our baser instincts, choosing policies that mortgage the future for the shallow, quick fix of tax relief, budget cuts, and law and order. Your intrepid columnist heard Schrag read from his book's introduction at Santa Monica's Midnight Special bookstore. The audience's flaming lefties were quick to take the subsequent discussion into the ideological ozone of corporate money *vs.* The People, from which it never really returned. So afterward the following e-mail was dispatched to the author (pleasantries omitted):

1. The public expenditure linkage to the glory days deserves more skepticism. First, as you know and alluded to, per-capita spending totals had been trending down for nearly three decades before Prop 13, as California diversified from a resource-extraction, heavy-manufacturing (thus high wage) economy. Also, the population mix on the receiving end has obviously changed dramatically. You implied that the progressive spirit of an earlier era wouldn't have countenanced the curtailing of public services to illegal immigrants. Come on! The California of 1958-1965 wouldn't have spent a dime on illegal aliens, except to deport them if they veered too far from the *brasero* fields, or (earlier) the rails and mines, or domestic service. To the extent they or their kids received any public services, it was to warehouse them.

2. Within expenditure categories, there have been tangible shifts of resources to non-mainstream applications. Special ed is the most dramatic example of this, and it's just the biggest of several socially-motivated programs now under the schools' umbrella. "Access" for "excluded" populations is a significant item for lots of public agencies — just how significant I'd be curious to know (have you seen any good studies?). This is spending for people who were ignored in the progressive heyday. And then there is the quality of life or "price of urbanism" spending. You write of the "decaying" freeways ... I wonder, what is the basis for a conclusion of relative disrepair — the road lobby's reports? Actually, I think the pavement is no worse — allowing for the fact we don't lay new stretches like we used to — than when I became conscious of it in the mid-1960s. And now transport taxes go for sound barriers, concrete median dividers, lane bumpers, earthquake retrofits, better landscaping, improved traffic-flow engineering, HOV lanes and other transit subsidies, and who knows what else. You the optimist should concede that in ways we perpetually-dissatisfied Americans don't appreciate, the level of many public facilities and even some services (emergency, *e.g.)* is higher now than ever.

3. The initiative process was manipulative long before the late 1970s, and radical populism and commercial interests had much to do with it. I'm sure I don't need to tick off examples to you. My favorites are from 1964 — the Rumford Act repeal triggered by the Realtors, and the pay-TV ban by the theater chains. Skip to 1972 and you have the land-use planning equivalent of the tax revolt against local government, the Coastal Initiative. If anything, I think the electorate in the face of all its evident and willful ignorance of public affairs has actually grown more skeptical and sophisticated about

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ballot measures and those who promote them. Not many pass, and those that do seem to reflect a genuine, considered public opinion. Can you remember any reversals from one election to another (other than Jarvis finally getting his measure passed)? There are lots of things to worry about in our civic culture — ballot initiatives are low on my list.

4. Your introduction included Proposition 209 among the litany of abuses of California's tarnished age, but I know from your writings on multiculturalism that you have a deeper appreciation of the general issue. [Indeed, later in the book Schrag accepts the spirit of 209, though he still complains that it was a manipulation by Pete Wilson.] I'm not sure what you've been writing about the UC acceptance figures, but painful as they may be, they obviously confirm what opponents of diversity quotas said all along. Intellectuals shouldn't let rhetoric cloud this: Based on standard meritocratic measures, young Latinos and blacks are way behind. Either you abandon time-honored standards of fairness in admission and the other 209 categories, or you face the music and deal with it by trying (unless Chas. Murray is correct) to raise competence levels. Honest liberals have to — ought to — recognize this. All 209 does is remove the veil and open up a debate over policies that really matter. By the way, while nearly all the attention is focused on the UC right now, the truly shocking and continuing outrage continues to be the knowledge gaps of all racial groups at the Cal State campuses. You imply we've been derelict in not building more 4-year schools ... shouldn't you be concerned first with having a matriculant pool that would deservedly fill them?

Schrag replied with customary graciousness, conceding a few points and referring to the body of his work on others. As always, it is good to have a liberal pundit or reporter out front, arguing positions on the merits. A conservative Californian could do the same ... though it might be wise to skip the reading at Midnight Special.

Turns out liberal Peter King wasn't limiting himself to the *Bee* newspapers when he left the *Los Angeles Times* columnist post. His "On California" punditry now gets picked up in big venues such as the *Orange County Register,* where he has pride of place (Page A3) on Sundays as well as Wednesday. Solid Sacramento bureau chief Daniel Weintraub has to settle for Page A4 for his Sunday *Register* thoughts. King's work has also found a place in the *Los Angeles Daily News,* which indicates that paper isn't going to be quite so provincially suburban as new owner Dean Singleton let on. A soulmate of King's at the *Times* grouses that, in effectively replacing him with Mike Downey from the sports department, the paper has "dumbed down our A3 while the competition has wised up a bit." Depends on where you stand, we suppose, but admittedly neither Downey nor conservative editorial cartoonist Michael Ramirez has been lighting the world on fire.

Meanwhile, the *Register* seems to have found another pundit to pick on the right: Jeff Kramer in the Accent section. In a humorous but pointed column, "Doing my part for a criminal in Congress," he wrote of volunteering for mock precinct work for Representative Jay Kim, confined by a court to Washington, D.C., for the primary campaign. Kramer's columns are more topical than political, but around Orange County the easiest targets for satire are Republicans.

A *Register* front-page story showed how Assemblyman Jim Morrissey of Santa Ana has been eviscerated by his close call (91 votes) in the 1996 general and now toes a more Democrat line, favoring bilingual ed and labor-union issues. Assuming there's merit in living to fight another day, you still have to wonder whether any of Morrissey's concessions will tame the ferocity with which the Dems will go after him on behalf of repeat opponent Lou Correa this time around.

CBS's "60 Minutes" blew a wet kiss to San Francisco's Willie Brown, crediting him among other things for the new privately-financed Giants stadium (which he had little to do with) and omitting mention of the embarrassing Forty-Niners stadium fiasco (which he had everything to do with). Neither San Francisco daily proceeded to set the record straight. Both papers badly hurt for a local political voice from the right. The *Chronicle's* Debra Saunders for the most part writes on national issues, with her occasional Bay Area columns usually reserved for some bureaucratic or legal outrage in the schools.

Erratum: Jack Nelson, notorious or not, is no longer the *Los Angeles Times'* Washington bureau chief. That post belongs to the less partisan Doyle McManus. CPR

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The Capps/Bordonaro Debacle

Party funding delays, a botched absentee drill, know-nothings in the term limits movement, and a campaign fleeing its candidate's (and the district's) abhorrence of partial birth infanticide — yet all we hear of is Gary Bauer.

by Richard Ferrier

CONVENTIONAL WISDOM has it that GOP Assemblyman Tom Bordonaro lost to Lois Capps in the March special election to fill California's 22nd Congressional District seat held by Capps' deceased husband, Representative Walter Capps, because Bordonaro was too conservative for the district. In particular, Bordonaro's prolife position, highlighted in the TV spots run by Gary Bauer's Campaign for Working Families, was thought to be a negative for the GOP in a district rich in sophisticated, country club Republicans like Assemblyman Brooks Firestone, whom Bordonaro beat in the primary race for the right to oppose Capps. Delighted liberal commentators from NPR to E. J. Dionne of the *Washington Post* spun the story this way: a seat that had been Republican for more than four decades, except when Walter Capps won it in 1996, was lost when the Party turned down pro-abortion, pro-gay rights Firestone, and chose a strident right-winger in Bordonaro. According to the *Ventura Star's* editorial page, voter resentment of the influence of interest groups from outside the district also contributed to Bordonaro's defeat, since he was the chief beneficiary of outside money. It was, crowed the liberal press, a triumph for citizen politician Capps, and a stinging rebuke to the religious right, which missed a great opportunity to regain the seat.

Conventional wisdom is dead wrong. It is based on lies and lazy journalism. Here is some of what actually happened. Bordonaro received less cash from outside groups than Capps did. Why? The know-nothings in the term limits lobby poured money into ads for Capps because, though she stands with her Party in *opposing* term limit legislation, she said she would *personally* not stay in Congress beyond six years. Bordonaro, who has a record of consistent *support* for term limits legislation, refused to, as he put it, "unilaterally disarm" the district by taking the pledge himself until the whole Congress is subject to the same rules, which he would vote for. This act of honesty triggered more than $300,000 in cash for his anti-term limits opponent. Capps is more than 60 years old and not likely to serve long in any event. Why don't the geniuses at Americans for Term Limits go all the way, and form alliances with AARP and the AIDS lobby to run aged or terminally ill candidates for all open seats, rather than go through the heavy lifting of making their policy law?

Can a strong prolife candidate win in the 22nd District, with its Brie and Chardonnay Santa Barbara socialites? Consider a little recent history. In 1990, the GOP incumbent, Robert Lagomarsino, *a lifelong abortion foe*, beat feminist Anita Perez Ferguson 55 to 44 percent. The district then contained Santa Barbara and Ventura Counties. According to the *1992 Almanac of American Politics*, Ferguson's losing campaign criticized "Lagomarsino's record on abortion, family care, and the environment." Two years later, after new congressional district lines had been drawn, in the Democrat year of 1992, Ferguson ran again in the new 23rd district against *prolife* Congressman Elton Gallegly. The 23rd differed from the old 22nd only in lacking the Santa Barbara precincts. Gallegly won 54 to 41 percent — an almost identical final tally for Ferguson. Conclusion: there was no huge pro-abort vote in Santa Barbara.

MEANWHILE, THE re-drawn 22nd now included Santa Barbara and San Luis Obispo Counties, and it was one of the hot spots in the GOP culture wars of 1992, with the notorious Michael Huffington going against Lagomarsino in the June primary. Huffington outspent Lagomarsino 6-1, including some $3 million of his own money. Huffington was a classic liberal on social policy, favoring homosexual "rights" and abortion, while Lagomarsino opposed them. Local Party people in Ventura and Santa Barbara Counties were furious with Huffington's arrogance, but the extensive media buys swamped Lagomarsino in the northern (more conservative) part of the district, where he had no name recognition, and Huffington won the primary 49 to 43 percent overall. But in *Santa Barbara County*, the prolife candidate, Lagomarsino, won: 55 to 42 percent. In the general election, Huffington spent the obscene sum of $5.4 million, the largest amount ever in any American house race, and just managed to match Lagomarsino's percentage the previous election, 55 percent.

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Huffington went on to serve one undistinguished term in the house, then ran for the Senate and lost to Dianne Feinstein. His $30 million campaign, four times what Bruce Herschensohn spent in 1992, gained him only 2 percent more votes than Herschensohn won, and Huffington was running in a good Republican year, 1994, while Bruce was swimming against the '92 Clinton tide. Huffington, who had pledged to serve no more than four terms, is the kind of man term limits were designed for. His campaign left the local Party in a shambles. He managed to lose Santa Barbara County in the Senate contest, with a bitter Lagomarsino actually endorsing Feinstein.

The 22nd district is by history and registration marginal. Before redistricting, Lagomarsino's margin had dropped as low as 1 percent in 1988, when he was opposed by a popular state senator, Gary Hart. The state assemblymen from the district are currently both Republicans, Firestone and Bordonaro, while the state senator is a Democrat, Jack O'Connell. Bill Clinton won the 22nd by 6 points in 1992, then lost it by less than a point in 1996. The Perot vote dropped off 16 percent in the 1996 election, probably causing the GOP's improvement. That one-time Perot voters thus seem to constitute one of the district's key swing constituencies would also seem to indicate that term limits is an especially potent issue there.

It is no surprise the House race for the district was close in 1994 and again in 1996. Both contests featured conservative Andrea Seastrand and ultra-liberal Walter Capps. Seastrand won by less than a point in '94, Capps by 4 percent in '96. When Capps died of a sudden heart attack last fall, both parties targeted the seat. Democrat speculation about possible candidates, including Hart and O'Connell, ended when Capps' widow, Lois, declared her intention to run. Widows have a way of winning, at least in the first election after their bereavement, and the Democrats are not the Stupid Party, as the saying goes. As for the Republicans ... Well, that electoral success-story and well known genius, Gerald Ford, who is close to Firestone, got to him quickly and pressured him to make the run. Firestone has a base in the 22nd's Southern part, and his candidacy would thwart the religious right, which Ford loathes. Anointings by Curt Pringle and Newt Gingrich followed, and Brooks thought he had a clear field. But Newt hadn't checked with the home troops. Firestone is among the most liberal members of the GOP assembly caucus, and not highly thought of by conservatives like Representative John Doolittle, who, with others, encouraged Bordonaro to make a contest out of it. In the January special election, Capps finished with 45 percent of the vote, Bordonaro with 29 percent, and Firestone with 24 percent. The headline in the *Ventura Star* the next day ran: "Firestone Crushed."

Why did Bordonaro, who was outspent by Firestone 4-1, win? For one thing, he is simply a good candidate, likeable and gifted with the common touch. But also, as George Will wrote in his Sunday op-ed after the election, because Gary Bauer had run effective ads pointing out Brooks' support for what Will called, "a particularly repulsive form of infanticide," namely partial birth abortion. Sources in the Firestone camp say these ads were decisive in the first election. Will thought so too, and argued that he deserved his fate. The *Star*, which buys the Will column, significantly did not print this piece, though it was of immediate local interest. And that shows you the problem Bordonaro's people would have with the spin on the upcoming campaign. They had an issue where 75 percent of the voters agreed with them, and they had outside money to help with it, but the media would do all it could to distort their position and raise cries of "outside influence," cries not repeated over the larger amounts term limits zealots would spend for Capps.

Would Firestone and the Party get behind the candidate, and would the campaign have the nerve and skill to make Bauer's help an asset? Both questions were answered in the negative.

THEY FACED other problems as well. Republican Party money men and strategists who had foolishly promoted Firestone were less than keen on Bordonaro, who had given them a pretext for taking revenge by announcing that he would not vote for Newt for Speaker if elected. And Firestone was crushed in more ways than electorally. He had trouble facing his rejection, and said bitter things to the press after the election. He announced he was dropping out of electoral politics, and voiced dire warnings about extremists and the religious right.

The crucial questions in the eight-week campaign to come would boil down to two: Would Firestone and the Party get behind the candidate, and would the campaign have the nerve and skill to make Bauer's help an asset? Both questions were answered in the negative.

First there was a delay in state Party funding to finance the Bordonaro campaign's absentee voter effort. The money was withheld through a crucial, early 10-day period during which Capps' absentee mailers were

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peppering the district, hitting both Democrat and GOP households, with an emphasis on Santa Barbara Republicans who might be expected to prove most susceptible to unanswered Democrat blandishments to cross over after Firestone's defeat. Why were the state Party dollars held up? California Republican Party Chairman Mike Schroeder, citing Bordonaro's pledge against voting for Newt, said he could not release the funds because of the state Party's so-called "Horcher rule." This is a provision adopted in the wake of the 1995 assembly speakership battle intended to deny Party help to Republicans either in or running for the state Legislature who side with Democrats to keep their own Party from controlling the Assembly or state Senate. The result of Schroeder's strange interpretation of the rule, intended or not, was that Capps outscored Bordonaro by 9,000 votes in the absentee ballot count, many of them from Republican voters targeted by Capps' earlier absentee blitz. Joe Giardiello, who ran Firestone's highly successful absentee ballot program in the election's first round (Firestone beat Bordonaro in absentees), ran Bordonaro's absentee effort in round two. He said Bordonaro's absentee mailer, that had been scheduled to drop February 3, instead had to wait until the 14th, not reaching voters (because of the Washington's Birthday holiday) until the 17th. By that date, Giardiello estimates, Bordonaro should have had 10,000-plus GOP absentee votes from mail. Also, he said up to 2,000 GOP absentee ballot applications came in too late for the March 10 election. Bordonaro's absentee ballot deficit contributed two-thirds of Capps' 13,000-vote victory margin.

GIARDIELLO SAW this trouble coming early. A February 14 internal memo to the Bordonaro campaign team, cc'd to the CRP, RNC, and NRCC, gave current figures as of that date for party breakdown as 64 percent Democrat, 22 percent Republican, and 12 percent other. The memo concludes that "I am currently of the opinion that this campaign is over. We will not be able to make up the shortfall in absentees with the Party plan currently being executed." Campaign consultant Jim Kjol put it bluntly to the *LA Times* (Orange County edition) in a piece published March 23: "One man sabatoged our campaign, and that was Mike Schroeder."

Schroeder downplays the effect the delayed mailers had on the outcome. "No competent conservative believes that a single mailer being delayed 10 days costs you 12,000 votes," he told the *Times'* Jean Pasco in the March 23 article. Schroeder also said the race wasn't winnable anyway, since widows are practically unbeatable. In the *Times* article, Schroeder claims the funding hold up was due to a technical question in federal election law. Giardiello and others in the Bordonaro campaign call that an excuse Schroeder gave after he had used the "Horcher rule" to punish Bordonaro's "no-vote for Newt" pledge. Gingrich, RNC Chairman Jim Nicholson, and Governor Wilson all made calls to the state Party asking them to release the funds — a roll-call of Party heavy-weights belying Schroeder's contention that "competent" pols unanimously considered the race "unwinnable." Schroeder finally gave in, although evidently too late for the absentee plan to be salvaged. For the GOP to lose in the absentees in a close race is highly unusual, to say the least. The little help Firestone gave his colleague came late and was ineffective. And Capps outspent Bordonaro by about 2-1, a reversal from the 4-3 GOP spending edge in the 1996 race. The final tally was Capps 53 percent, Bordonaro 45. Under the circumstances, it seems understandable that more than one observer believes it possible that someone in a smarting GOP leadership *wanted* the race lost to punish the upstart assemblyman.

On the second question — would the campaign have the nerve and skill to make Bauer's help an asset? — the campaign's nerve failed it, or perhaps it miscalculated, running away from the issue of partial birth abortion. Its standard line about Bauer was that the candidate was losing control of his message, that he didn't want Bauer's help, which was distracting local citizens from issues of real concern to them. This line, while demoralizing some conservative activists, did little to mollify Firestone's friend Gerald Ford, who handed Capps a mail-hit-piece headline she proceeded to use when he told the *New York Times* that Bordonaro represented the "extreme right wing."

But, more importantly, Bordonaro's handling of Bauer sent a self-damaging signal. The public may be inattentive, but it is not stupid. It can tell when a man seems ashamed of his friends, and that's what the Bordonaro campaign appeared to be. The candidate, who had not disdained to appear as a guest on Alan Keyes' radio show when he was looking for conservative votes before the January election, would not accept a Keyes visit to the district offered in February. *The Weekly Standard's* David Tell, by the way, called Keyes "America's greatest living orator." Keyes is certainly dynamite, and not just on the issue of abortion, but also on race preferences, taxes, and many others.

Bauer's ads ran anyway, and Capps, feeling the heat, as Firestone had before her, edged towards the center with a Clintonesque "exceptions for the health of the mother" cover position. The "partial birth" issue's effect on the campaign is a matter of dispute. Jim Kjol

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Who ya gonna call?

Jane Harman's spectral constituents

WHEN MIKE HUFFINGTON suggested part of the reason he lost to Dianne Feinstein in 1994 was election fraud, state Democrat Party Chairman Bill Press and the liberal media, led by the *Los Angeles Times*, tried to laugh him back to Texas. Thanks to former Representative Robert Dornan's challenge of his 1996 defeat by Representative Loretta Sanchez, we've learned that maybe the Democrats' efforts to turn Huffington's charges into a joke were really meant to divert attention from a pattern of fraud-tainted elections. Of Sanchez' margin of 979 votes, 748 were confirmed as illegal, with evidence strongly indicating another 196 votes were also illegal. So, 944 votes out of Sanchez' margin — 96 percent — either definitely or probably should have been tossed out, a close call for the Democrats.

Leon McKinney is a CPR *contributing editor.*

Dan Lungren may be kicking himself for failing to look more closely three years ago at allegations surrounding Harman's 1994 Congressional race and the startling discoveries it brought to light.

And if the Republican leadership had decided they were men, not sheep, Sanchez herself would have been thrown out, too. But the Democrats bullied the GOP into agreeing to rules going far beyond rigorous, fair standards for settling contested elections (unlike 1984, when the Democrats ran the House and the "rule" for deciding who won Indiana's 8th congressional district race was to ignore the vote count and seat the Democrat). The Democrats insisted that all votes be considered legal unless INS records proved otherwise (so votes cast by undocumented immigrants, say, would automatically go unquestioned). Furthermore, before tossing out a vote, voter records had to match INS records for names, birth dates, birthplaces and addresses. As I pointed out last issue, the address match requirement cleared almost every suspect vote because, as everyone knows, people in California move frequently, especially immigrants.

Among those celebrating Sanchez' "victory" was her campaign manager, John Shallman, who, shall we say, seems to have a knack for being involved in elections where illegal voting plays a role. Interestingly, he was also campaign manager in the 1994 36th Congressional District race of Representative Jane Harman, who just happens now to be a candidate for

BY LEON McKINNEY

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the Democrat's gubernatorial nomination. Her certain Republican opponent, Attorney General Dan Lungren, may be kicking himself for failing to look more closely three years ago at allegations surrounding Harman's '94 race. Some startling discoveries had come to light after Harman defeated Susan Brooks that year.

California's 36th CD encompasses the beach cities west of Los Angeles. Its demographics cover a range from luxury Palos Verdes peninsula mansions to upscale beachfront homes and singles' complexes in Manhattan, Redondo, and Hermosa Beaches, to Venice, which includes some pretty rough neighborhoods. The district leans slightly Democrat. In November 1992 Jane Harman won with 48 percent of the vote.

Two years later, in the early morning hours of November 9, it appeared that GOP challenger Susan Brooks had won an upset victory over Harman. She held a slim 93-vote lead, but was winning in 10 of the district's 13 cities and holding a six-point lead in the traditionally Republican absentee vote, only half of which had been counted. What a surprise, then, when in the first week of December, Los Angeles County Registrar Bea Valdez declared Harman the winner by 812 votes out of 210,188 cast.

A TREASURE TROVE OF BALLOTS

DURING POST-ELECTION ballot canvassing and certification, Valdez (a Democrat) somewhere "found" a huge trove — 1,058 in all — of previously uncounted absentee ballots, and declared that nearly half of the district's 547 precincts had under counted their absentees. Guess what? The vast majority of these absentee ballots were marked for Harman. In response, many polling officials — most of whom were registered Democrats — signed affidavits stating "...our original number (of ballots) is the true and correct one and the substituted one is wrong." According to one precinct worker, "we each counted them four times and there is no way our number is wrong; we know the difference between 12 and 23." But Valdez' certified count stood.

Meanwhile, Brooks campaign volunteers and concerned local elected Republican officials formed the Committee for Election Integrity (CEI), led by Redondo Beach Mayor Pro Tem Liam Weston. CEI compiled a database of thousands of apparent illegal votes, which they submitted in December 1994 to the House Committee for Administration and Oversight — the congressional committee responsible for certification of elections and seating of Members. House Oversight was chaired, then as now, by Republican Representative Bill Thomas from Bakersfield. Thomas appointed Florida Republican Lincoln Diaz-Ballard to chair a House task force to investigate the contested election.

CEI looked at precincts where Harman received her largest majorities. They zeroed in on Venice, which had the 28 precincts with the highest percentage of votes for Harman. Overall, Harman received *80 percent* of Venice's votes. Seven adjoining precincts in the neighborhood of Venice's 6th Street — a tough black and Hispanic area — were among these. They went *82 percent* for Harman. CEI members attempted phone interviews with voters in those precincts, sent letters, and even went door-to-door (CEI hired current and former gang members to escort and advise the interviewers). They visited and/or interviewed people at about half the voter addresses; of those, more than 25 percent were either abandoned buildings or listed Harman voters as residents who did not live there.

A voter registered as Cynthia Moore, for instance, listed 659 San Juan Avenue in Venice as her voting address. The house at that address has been unoccupied and boarded up since 1991 and the owner said he has never had a Cynthia Moore as a tenant. Voters registered as Diane Bachernski and Jennifer Everts registered just before the election, giving 1217 Cabrillo Avenue as their voting address, a building that had been vacant since at least November 1993. Other voters listed abandoned buildings on which the landlords or property managers insisted they'd been making repairs and renovations continuously, and that not even homeless people could have been residing in the buildings.

THE PONY EXPRESS POSTAL SERVICE

ALSO POPULAR among Venice voters was listing as their residence the Pony Express postal service store at 1517 Lincoln Boulevard in Venice. By law, voting registration addresses must be residences, and obviously none of these voters actually lived at Pony Express. CEI's gumshoe research led CEI leader Liam Weston to declare invalid 296 — 13 percent — of the 2,209 votes cast in the seven Venice precincts. If *all* the seven precincts' ballots had been thrown out, and votes for Harman and Brooks subtracted in proportion to votes credited to them, Brooks would have won by 590 votes. In total, as reported in the June 1995 *Reader's Digest*, CEI's "findings indicated that of 5,292 absentee ballots from 20 Venice precincts that went overwhelmingly for Harman, 1,337 (26 percent) had been cast by voters whose addresses on the rolls turned out to be abandoned homes, empty apartments, vacant lots."

And such improprieties were not

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Keeping the communication revolution at bay.

Why, after two years of telephone 'deregulation,' monopolies still tightly control your local service.

by Michael S. Fredenburg

"THEY'RE STUPID jerks, and they must be destroyed." These are the words that Robert Metcalfe, founder of 3Com, uses to describe local telephone monopolies like Pac Bell and its Texas-based parent, SBC Communications. Metcalfe is not alone in his exasperation. Roger McNamee, a well-known Silicon Valley investor, was recently quoted in the *Wall Street Journal* saying, "Our industry is driven by Moore's Law. Theirs is driven by Moron's Law — the morons who run and regulate America's telcos." Metcalfe and McNamee are part of growing chorus of voices calling for the dismantling of one of the last government sanctioned monopolies. What may have seemed like a good idea — indeed even an economic necessity — more than 100 years ago when modern utilities were being established, has become little more than government-approved inefficiency. To the high tech entrepreneurs creating new wealth and opportunity, the telephone monopolies represent one of the biggest roadblocks to their otherwise largely sunny future.

The Telecommunications Act of 1996 was supposed to clear these roadblocks, opening up local markets to competition. Local monopolies like SBC/Pac Bell would be allowed to shed many regulatory shackles and join the competitive world of long distance service. But first, they had to open their local service markets to competitors, much as AT&T had done with long distance when the original telephone monopoly was broken up. Two years after the new law was enacted, what are the results? Pac Bell has thrown up so many technical and economic roadblocks to potential competitors that it still controls most of the market in its local service area. Practically all of the more than 100 companies that wanted to provide local service to California consumers have now backed out.

The difficulty centers on the use of existing phone lines. As a legacy of pre-break-up days, millions of miles of them belong to the old monopolies, AT&T in the case of long distance and the Pac Bells of the world in the case of basic and local toll call service. Market competition and consumer choice requires either that competitors all construct and maintain their own lines, a ridiculously inefficient and unworkable idea, or that all competitors be able to use existing lines. What about the old monopolies' property rights to those lines? Their investment in creating these networks must be recognized; the lines cannot simply be seized from them. On the other hand, their ownership of them is a direct result of their having been granted monopoly status in the first place. They would not "own" them, would never have constructed them at all, without that unfair advantage. To balance the issue, then, owners of these lines receive a fee from other communications companies that use the lines to service their customers, but the lines' owners should not be permitted to continue to stave off competition by using these "access fees" not merely to recoup fair payment for use of the lines but, by setting exorbitant rates, to price would-be competitors out of the market before they even come in.

IN RECOGNITION of this problem, when AT&T was broken up in 1984, it was forced to offer its competitors 50 percent discounts off of its retail price for leasing its lines. But the California Public Utilities Commission (CPUC) hasn't followed this lead. Pac Bell is permitted to charge its competitors a line-lease rate only 12 to 17 percent below retail. The notion that companies could provide local phone service with only these margins to work with is ridiculous. Only when the CPUC brings down the wholesale price Pac Bell is charging will it be possible for other service providers to compete for the local service market. Further dampening potential competitors' enthusiasm is that the CPUC currently sets pricing for interim periods only, adding more uncertainty and making competing with Pac Bell even less attractive. Pac Bell also charges its competitors a one-time fee of nearly $300 *per customer* to switch them over. This so-called "nonrecurring" charge, coupled with competition-stifling lease line prices, have made entry into Pac Bell's local service market virtually impossible. And Pac Bell has dragged its feet in achieving order system compatibility with potential competitors. This means consumers

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who wish to switch can be subject to long delays and actually be without service while paperwork is being processed. The CPUC, by allowing this situation to persist, has angered the high tech community.

It is in this context that Pac Bell recently petitioned the CPUC to be allowed to provide long distance service. In late February, the CPUC held a day of hearings to try to understand why local competition has stalled in California. More than a score of telephone entrepreneurs testified, offering a multitude of creative ideas on how to create wealth and opportunity and provide better service in the telephone industry. For the most part, they were direct competitors of each other. Interestingly, the one thing they all agreed on was that Pac Bell should not be allowed into the long distance market until it opened its local markets to competition. Those testifying represented every segment of the telephone industry, from large established companies like AT&T and MCI to small start-up firms. In short, these were not people afraid of competition. What they do fear is a telecommunications landscape dramatically changed for the worse if one company is allowed to enter the long distance fray unfairly equipped with a monopoly base of local service.

Local phone service monopolies have delayed the roll-out of new services and products, exacerbating, in the process, a growing deficit in phone capacity. The current bottlenecks in telecommunications technology could be alleviated by new copper wire technologies such ADSL (Asynchronous Digital Subscriber line), DSL (Digital Subscriber Line), and ATM (Asynchronous Transfer Mode) which increases the data-carrying capacity of the existing installed base of copper wire telephone lines. This massive increase in capacity would allow new innovative telecommunications products to be offered to residential and business customers. But the Baby Bells, including Pac Bell, have dragged their feet. Without competition, they have little incentive to retool. Indeed, plain old telephone service is much the same today as when your grandfather placed a call. Capacity is up, as is the speed of connections, but once a connection is made you get essentially what your grandfather got. Only as the Baby Bells have had to compete with other carriers for local toll calls have we seen more types of products become available to telephone customers.

CONTRAST THE Baby Bells' record of innovation and growth with that of the high tech/computer industry. The first microprocessor, the Intel 4004, was invented in 1971 and could process 400 instructions per second. A big step up was the IBM Personal Computer of 1981 that could sort 330,000 instructions a second. Today, the average PC can handle 200 million instructions per second and Digital's newest experimental Alpha processor can handle some one billion instructions per second. In less than two decades, computers have gone from simple boxes with monochrome monitors to providers of telephony, multimedia, internet connectivity, etc. At the same time prices have plunged and consumers can buy a computer for less money that is many times more powerful and versatile than the more expensive computers of just a few years ago. What distinguishes the computer industry from the Baby Bells? Competition rather than monopoly. Pepperdine University Professor Robert Sexton, writing recently in *Investors Business Daily,* summed up the situation nicely: "Since competition hit the long-distance market ... prices have dropped almost 70 percent. With over 700 long distance providers competing aggressively for each customer, long distance prices have fallen dramatically as services have expanded." In the meantime, he wrote, "local rates have climbed 53 percent."

BUT IT gets worse. Consumers are not merely stuck with the *status quo,* but with deteriorating service. 1997 set records for complaints to the CPUC about SBC/Pac Bell local service, nearly tripling the previous year's total. Some customers had to wait six weeks for phone service. Would this happen if Pac Bell had to compete?

Pac Bell portrays itself as a friend of competition in its bid to enter the long distance market, bragging that competitors now offer more than 200,000 lines of local phone service. What Pac Bell doesn't mention is that it still controls more than 17 million lines: close to 99 percent of the market. By any economist's definition, that is a monopoly. When Pac Bell says its share of the local market is 44 percent, it is talking about toll calls — local long distance — not basic service. And it is quiet about how local long distance competition has brought business and consumers big savings — a result basic service competition would also bring.

The worlds of high technology and telecommunications are inextricably linked. And high tech's growth potential is enormous. Half the world's people have never made a single phone call — *that's* a huge potential market. Under the Telecommunications Act of 1996, the FCC will finally determine whether or not Pac Bell and its sister Baby Bells have opened up their markets to competition. As of now, the answer is plainly no. Unfortunately, the California Public Utilities Commission has so far been unable or unwilling to set pricing structures that will allow competition. Any FCC approval of Pac Bell entry into long distance should wait until CPUC corrects matters and competition takes root. CPR

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Enticing the Muses

The orphaned visions: The West's greatest art celebrates eternal truths — so why has conservatism lost the ability to inspire?

By James Bemis

Hope and Memory have one daughter and her name is Art ....

— W. B. Yeats

IT'S NOW axiomatic that American culture, including most artists, has hitched its allegiance to the left. In fact, conservatives have so conclusively accepted this reality that they do little thinking about why it is so. Thus, although winning political and economic battles, they are being completely routed in the far more important cultural war, which is where life in this country — in any country — is actually lived.

Look at high-circulation conservative publications and journals, the high water mark of the modern conservative movement. Feature articles are nearly always about economics or politics. Very practical, down to earth. If any creative artist is highlighted, it's usually an author — of books on economics or politics.

Not so the films of Hollywood. Stories of heroism against bigoted, reactionary forces fill screen after screen, along with parables of evil capitalists, shrewdly exploiting the poor and noble. Conservatives and the religious are typically portrayed as villains or buffoons; the rebellious and libertine as modern saints. Simplistic, I know, but don't laugh: it's all part of the mythology — the religion, if you will — of the left. And it's the key to the liberal's artistic dominance.

Myths — defined here not as fictitious events, but the tales, fables, and images that underlie and define a people's beliefs — are man's most important cultural element. Myths are symbols — evoking emotions, cultivating attachment and delivering anathema, revealing what a society loves, fears, and hates — as depicted in traditional art forms like stories, songs, and poetry handed down from generation to generation. Those who control a people's myths — that is, its artists — by nature also control their culture. Why, then, are today's artists so overwhelmingly drawn to the left? It is — a truth George Bush unwittingly stumbled upon — that "vision thing."

The aim of the artist is to provoke a certain response from the viewer, reader, or listener to his created image. He attempts to present this image in such a way that audiences will feel the desired emotions and grasp a certain interpretation of the creation. Poetic imagination, the artistic impulse, reflects the stimulus of a vision — a philosophy or theology, if you will — about the nature of man. This vision of man must also necessarily make assumptions about man's relationship to the universe, and thus about God. "In the beginning, no God ..." is just as much a religious statement as "In the beginning, God ..." The artist's imagination, then, responds to an aesthetic stimulus, not a scientific one, based on a poetic image of man. And this is where conservatives begin to lose their way.

Liberals have made a religion — with worship, symbols, rituals, and saints — out of its modern poetic image: Enlightened Man. This image describes man

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as born good, and then corrupted by an authoritarian environment. Free him, educate him, and he will return to his naturally good state, living in peace and harmony with his neighbors. He needs no supernatural being to help him reach perfection; he may, given enough freedom and facts, attain Heaven right here on earth. Since Enlightened Man is naturally good, so are his instincts. And his instincts, or appetites, are aroused by voluptuous beauty. These appetites lead to sensual desires, fulfillment of which is the highest "good" in Enlightened Man's universe. The only sin is restricting pursuit of this "good."

Liberals have made a religion — with worship, symbols, rituals, and saints — out of its modern poetic image: Enlightened Man.

Enlightened Man's emphasis on physical fulfillment has a profound impact on the idea of society. Here, each person is isolated in his or her own private world of subjectivity, in which every choice is as good or bad as another. The individual thus becomes an entity outside the reach of the shared values of the community, leading to a deep sense of personal alienation. Because this is a false religion, its fruits are ugly and often evil, but its theology is very distinct. Man is deified, becoming his own god; public schools become houses of spiritual cleansing and worship, and the sacred beliefs of progress, equality, tolerance, and democracy the dogmatic myths of its orthodoxy. Call this modern paganism if you like; it is, nevertheless, the perfectly logical extension of the Enlightenment.

Unfortunately, because of his fallen nature, man, no matter how enlightened, without God is prone to corruption. This is why modernity's shining dream of Enlightened Man has degenerated into the wretched, ugly, hag of today's culture. Ultimately, it's a barren image, incapable of sustaining great artistic achievements.

TODAY'S CONSERVATIVES have not effectively countered the progressive's image of Enlightened Man. Instead, whether co-opted by modernity, lack of imagination, or simply afraid of being laughed at by the intellectual elite, they've been cowed into presenting only a safe, limited, materialistic view of man, unable to articulate an alternative poetic vision to Enlightened Man. This conservative notion, possessing neither heart and nor spirit, encompasses only a half vision of man: an economic, scientific one (call it Business Man), one that cannot possibly inspire an artist. In fact, for appealing to artists, there's no worse image: Business Man has for centuries been the object of contempt and ridicule in the art world. It is a vision suggestive of conniving, dishonesty and, yes, greed — not an image to make one's blood run hot, inspire creative devotion, make the good man's eyes well up with tears. The brave will not offer their lives for a four percent increase in GNP.

The alternative to modernity's Enlightened Man is, of course, Heroic Man — the vision that's inspired Western civilization. The poetic image of Heroic Man is one of supreme nobility, altruism, and self-sacrifice. Born tainted with Original Sin, Heroic Man is drawn toward goodness and objective beauty by God's Revelation, able to strive for perfection only with the help of an outside, supernatural force. Because he is weak, his mighty struggle to accomplish good and resist evil takes on a noble, even a heroic quality; this ideal gave birth to the knight, and later, the gentleman. Struggling against wickedness and his own failings, Heroic Man draws strength from belief in his Creator and the ancestral faith of his fathers. Thus, this vision possesses — pointing toward Yeats, as quoted above — both Hope and Memory, which give birth to their radiant daughter, Art. This image inspired Shakespeare, Dante, Bach and Mozart, the builders of European cathedrals, and other great art of the West.

The medieval Catholic Church was the most successful exponent of the Heroic ideal. The Church won all the arts into her service because of the beauty of the vision she inspired. Far from shackled during the so-called "Dark Ages" (a description betraying either ignorance or deceit), medieval man, his imagination fired by the Church's poetic image, created art of lasting beauty in architecture, literature, music, and painting. Medieval artistic achievements will long outlast modernity's disposable creations.

In recent times, Ronald Reagan attempted to unfurl a poetic vision along these lines, combining the myth of Heroic Man with that of Business Man, with some success. But lacking the sustaining support of the traditional art forms of songs, storytelling (which is the essence of filmmaking), or literature, he alone could not launch a sustained revival of the traditional view. American culture barely faltered in its woeful decline. Reagan's conservative successors have since timidly beat a hasty retreat back to the safe, if flaccid, ideal of Business Man. A good case study of culture war dynamics is offered by this half-century's three feature films about the Titanic tragedy — the 1953 production *Titanic,* 1958's *A Night To Remember,* and the current blockbuster, also entitled *Titanic.* Putting aside each film's quality — *A Night to Re-*

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member is by far the best of the bunch — what's interesting are the underlying cultural assumptions implicit in each movie. In the 1953 Hollywood film, Clifton Webb and Barbara Stanwyck play a dysfunctional married couple, as Webb discovers that his young son, who idolizes him, is illegitimate. Webb's estrangement from his family ends when his son heroically gives up his safe seat on a lifeboat with his mother and sister to return to seek his father on the sinking liner. The film ends with the two, along with the rest of the doomed passengers, singing "Nearer My God to Thee," as the ill-fated cruiser goes under. The 1958 British production, *A Night to Remember,* starring Kenneth More, emphasizes the Titanic as a supreme technological achievement, with an intriguing subplot featuring one of the ship's designers, Thomas Andrews, trying desperately to save the ruptured ship. Andrews goes down with his ship, but More's character, through his nautical and scientific know-how, survives, saving several other lives as well.

HOLLYWOOD'S CURRENT teen drama, *Titanic,* its first billion dollar baby and winner of a record-tying 11 Oscars, eschews both the heroic individual and family conflicts portrayed in the 1953 movie and the scientific man-versus-nature approach of the 1958 British film in favor of the "progressive" themes of class struggle and feminism. Here the oceanliner tragedy serves merely as a backdrop for the film's "enlightened" characters to find themselves and each other, defeating the regressive forces of money and status (in his case) and sexism (in hers). While the real ship sank to the bottom of the Atlantic, Hollywood's *Titanic* provides safe passage for modern mythology. With remarkable special effects and cinematography, the movie provides a fast-paced three hours of entertainment. But beneath the film's attractive surface, Enlightened Man's murky moral message, like an underwater shark, runs fast and deep. The film portrays the wealthy, consistent with the liberal stereotype, as uniformly crass and self-indulgent, while those in steerage are warm and sharing. The rich heel, played by Billy Zane, is nearly campy; a Simon Legree-type villain right out of the silent era. All he needs is a handlebar moustache. In the film, women find fulfillment by rejecting traditional roles of femininity and marriage, and indulging themselves in spitting, profanity, and (what else?) premarital sex. Conforming to Hollywood's new ethos, no consequences arise from the characters' self-indulgence.

But, hey, it's just a movie. *Titanic's* hardly the worst current offender, but comparing these three films clearly shows what conservatives are up against. By tacitly surrendering to the premises of Enlightened Man, traditionalists are rendered incapable of refuting it with their own alternative vision; they may not even know there *is* an alternative vision. And without articulating a competing appeal to the poetic imagination, conservatism is reduced simply to slowing the inexorable cultural tide. By attacking liberalism only in *ad hoc* skirmishes, conservatives have been fighting the wrong enemy. In the culture war, it's not just the left that conservatives should be combating. Leftism is but one political and cultural component of the larger enemy conservatives should attack: modernity and its poetic image of Enlightened Man. If conservatives accept modernity's assumption of man's natural goodness and self-possessed perfectibility — and thus his autonomy without God — they won't compete in the culture war because they won't inspire artists to embrace the only tradition that can serve as rival: the heroic ideal. And the problem is that, in many ways, conservatives *have* accepted these assumptions, equating modernity with improvement. Belief in Progress has itself become an American myth and no one wants to be seen standing in its way — certainly not prominent Republicans.

Some modern fruits are undeniably sweet: who doesn't love their computers, microwaves, and compact discs? But because of Enlightened Man's decadence, manifested in an obsession with self-indulgence and physical fulfillment, our country now gorges itself on hedonism and consumer goods: physical needs are placed above spiritual ones, pleasure above joy, convenience above culture. Glorifying "Progress" misinterprets the source of our wealth and indicates an inability to sort out the wheat of real improvement from Modernity's chaff. Technological advancements that truly improve the human condition — medicines, machinery, tools — result from honest scientific inquiry, a concept consistent with the image of Heroic Man and his quest for revealed truth. ("Progressives," remember, dispense with truth as a delusion of unsophisticated minds.) Conversely, the greatest horrors of this century — the bloodiest ever — resulted from Enlightened Man's monstrous use of science freed from the constraints of faith. Hitler, Stalin, Mao Tse-Tung and others quickly realized technology's uses for increasing their power over men. For the millions *they* ruled, Progress cost an unbearable price.

CONSERVATIVES CANNOT hope to do cultural battle astride commercialism's gelded steed. The vision of Heroic Man is as attractive as ever; only its champions have grown tired, lazy, timid, or corrupt. In leaving our inherited poetic image undefended against the progressive's Enlightened Man, we've abandoned the field and left ourselves no choice but to swallow the poison of modernity with the bit of sugar its conveniences bring. CPR

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Affirmative

Gloria Matta Tuchman

It Will Take An Initiative to End the Failures of 'Bilingual Education'

A YOUNG BOY, Tony Velasquez, enters his first grade classroom each day to do what little boys do at school: read, write, spell, do math, and, hopefully, learn English. His mother and father are eager to watch their son progress in his reading and writing skills. During the school year, his parents notice that Tony is not improving his English skills and inquire as to the reason. Tony has been placed in a bilingual classroom. Instruction in English is not a part of his daily lessons.

No matter that Tony and his parents speak primarily English in their household. No matter that Tony's parents have asked the school to move their son out of the bilingual education class so that he may be instructed in English. Tony's parents have been told "No!"

Tony is now in second grade and his mother tutors him each night in reading, spelling, and writing English to make sure her son develops the skills she feels are important to her son's future.

Why would a school reject a parent's wish to have their child learn English? One reason is financial motive — to the tune of $400 million each year. For the past 20 or

Gloria Matta Tuchman is a first grade teacher, proponent and co-chairman of the "English for the Children" initiative, and chairman of the State Committee to Reform Bi-Lingual Education.

A California Political Review Debate

Resolved:

Proposition 227

deserves a 'yes' vote.

Negative

Peter Ford

The Troj-Unz Horse Initiative

IN 1968, Congress passed the Bilingual Education Act, promising immigrant students would study English, not their primary languages. The Supreme Court ruled in 1974 (*Lau v. Nichols*) that Limited English Proficient (LEP) students required special support, with *no* mandate for foreign language usage. Nevertheless, the U.S. Department of Education crafted "Lau remedies," requiring bilingual programs use "native language and culture."

California taxpayers pay $4 billion annually for these programs, which today emphasize the native tongue. One in four public school enrollees cannot speak English. Despite clear evidence that native-language approaches fail, our cash-cow state Department of Education (DOE), California Association for Bilingual Education (CABE), lobbyists from the Mexican American Legal Defense and Education Fund (MALDEF), and other "immigrants' rights" groups have prevailed.

Though California's bilingual education law expired 11 years ago, political and personal agendas successfully block districts' attempts to switch to legal, effective, less expensive English immersion approaches.

School districts submit reports (R30-LCs) each April to the DOE revealing that just one in 20 LEP students become fluent in English annually, a 95 percent failure rate. Our Legislature won't correct this mess, despite its duty under the California Constitution, Article II, Section 6. Now, Silicon Valley millionaire Ron Unz claims his Proposition 227 will end the bilingual nightmare.

Mr. Ford is a talk-show host on radio station KIEV (870 AM) in Los Angeles. He can be reached at his website: http://www.peterford.com.

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Tuchman

30 years, California schools have been locked into a bizarre policy of "bilingual education," which actually means that many of these young school children are taught little or no English. Instead they receive nearly all their instruction in their native language (usually Spanish); often from uncredentialed teachers. While the bilingual education budget has doubled in the past decade, test scores and English literacy for English learners has fallen.

California's bilingual education program not only falls short of the mark for children, it is an administrative nightmare and a cash cow for self-serving interests and agendas. Presumably the primary goal of bilingual education is to teach English. In practice, bilingual education delays the learning of English.

What is "bilingual education" in California?

In the majority of California schools, bilingual education is a program that utilizes the student's primary language for initial skill development until the child has met mastery criteria for transition to English reading, and to skill development through English instruction. The majority of the instruction, including textbooks and teaching materials, is in the child's primary language.

Why is the bilingual education establishment opposing "English for the Children"? Answer: see above — that same $400 million currently flows to the schools to support teaching our children to learn English in Spanish. Many of those dollars go to buy textbooks in Spanish, to bonuses for bilingual teachers, and to support a cadre of bilingual program administrators.

WITH 33 years experience in teaching English learners, I can tell you that bilingual education as we know it in California has been, and is, a disaster! Since 1968 when the Bilingual Education Congressional Act took effect, educrats and special interest groups have been trying to justify the program's existence. Finally, in May 1997, the National Research Council (NRC) released a report stating: "The US Department of Education's management of bilingual education research has been a total failure: wasting hundreds of millions of dollars; using the research agenda for political purposes to justify a program that has not proven its

Ford

Yet, Unz's mislabeled "English Language Education for Immigrant Children" Proposition 227:

- End runs Proposition 187;
- Establishes a $500-million program to fund militant anti-American groups;
- Codifies bilingual education via "waivers" where no such law exists;
- Creates preference-based school 'vouchers,' violating Proposition 209;
- Funds immigrant voter registration drives under the guise of adult education.

Proposition 187 End-Run

Unz spoke at the 1994 anti-187 rally in Los Angeles, calling Proposition 187 "the most monstrous proposal that's ever gotten on the ballot," which would "turn California into one large prison camp, filled with [illegal alien] mothers..." He boasted that he personally "managed to persuade ... Bill Bennett, Jack Kemp, and others to publicly oppose Proposition 187," insisting taxpayer-subsidized illegal-alien education was "a question of morality."

PROPOSITION 227, Article 1 (c) states, "WHEREAS the government and the public schools of California have a moral obligation and a constitutional duty to provide all of California's children, regardless of their ethnicity or national origins, with the skills necessary to become productive members of our society...," not mentioning citizenship status. State Legislative Counsel's legal opinion says that Proposition 187 would prevail over Proposition 227, but attorney Allan J. Favish, whose *Los Angeles Times* commentary detailed the Proposition 187/227 conflict, notes the opinion ignores the Proposition 227 Section 300 (c) "all" clause, rendering the Legislative Counsel's opinion flawed. In fact, the Attorney General's staff had urged Unz to replace "children" with "citizen-children," advice Unz refused to take.

$500 million Funds "Adult Immigrant Education," anti-American Groups, and Voter Drives

Article 4, Section 315 creates a new 10-year, $500 million entitlement, ostensibly for adult immigrant education. This "additional funding" for "free or subsidized" English instruction benefits parents or other "mem-

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Tuchman

worth; and not making its research available to the educators who could use it to improve their school programs."

The original intent and primary goal of the program when it was instituted in 1968 was to teach English learners to become literate in English. In 1998, that goal is not being met. California's bilingual education program is not only failing our children, it's failing California's future as a global economic power. It is bankrupting California education, intellectually, politically, and fiscally.

Proposition 227 – The English for the Children Initiative

The English for the Children initiative, Proposition 227, a ballot measure for June 1998, would require limited English speaking children to be taught in a "sheltered English immersion" program as soon as they begin school unless their parents object. Under "Sheltered English Immersion," youngsters not fluent in English are placed in a classroom in which a teacher teaches them *English*. This is an English language acquisition process for children in which nearly all classroom instruction is in English, but with a special curriculum, and presentations utilizing special techniques, such as visuals and gestures. Comprehensible vocabulary designed for children who are learning the language and primary language support may be utilized.

This initiative creates parental choice by allowing parents to keep their children in bilingual education programs if they deem it best for their child. If parents provide evidence that a successful bilingual program will actually help their child learn English more quickly and benefit their child's overall education, then a waiver is available to that parent.

Under federal law, students who are not native English language speakers, have the right to extra instructional help. The initiative provides this help through the "Sheltered English Immersion program" and through provisions ensuring that students with special needs, such as learning disabilities, do not fall through the cracks. These students are offered waivers so the parents can choose the educational method that works best for their child.

The initiative states that chil-

Ford

bers of the community," bankrolling "community organizations." A Department of Education report reveals radical militant groups have received tens of millions of tax dollars, supposedly for immigrant adult education. Two notable examples are *Hermandad Mexicana Nacional* ("Mexican National Brotherhood"), which registered non-citizens to vote in the last election, and another group called One-Stop Immigration which organized an anti-Proposition 187 demonstration and an anti-Proposition 209 march. It should be noted that English language instruction is currently offered for free or at a nominal cost at most schools.

Los Angeles Unified's superintendent, Ruben Zacarias, admitted in a 1997 meeting to using education funds to "change the political panorama" by running "the largest citizenship program in the country." Is Proposition 227 about teaching English to children or creating new adult citizens?

Waivers Codify Bilingual Education and Encourage 'Vouchers'

Article 3, Sections 310 and 311, allow parents/guardians to secure waivers from English-immersion programs for LEP students, who must then be placed in bilingual education or other programs. LEP students with "special needs ... physical, emotional, or educational," *i.e.*, virtually all such students, could conceivably qualify for these waivers.

Section 310 states: "Individual schools in which 20 students or more of a given grade level receive a waiver [students need not share a language] shall be required to offer such a class" [i.e., bilingual education/other methodology]. A state Board of Education policy (March 12, 1998) which restores local control to districts who choose structured English-immersion approaches will be jeopardized by Proposition 227's mandate that just 20 parents may demand bilingual education, or sue.

SECTION 310 continues, "otherwise, they must allow the student to transfer to a public school in which such a class is offered." How will this transfer be done — busing? A preference-based 'voucher' would need to be created for the LEP student.

The Attorney General's Official Title and Summary acknowledges potentially huge costs sanctioned by Proposition 227 (in section 310), saying fiscal "impacts on individual school districts would de-

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dren shall be educated through "Sheltered English Immersion" during a temporary transition period not "normally" intended to exceed one year. Nowhere does it say that a year is all that students can receive. After one year of "immersion," the progress of each child will be evaluated to see if more time is required.

"Accountability" is the name of the game. Finally parents will be able to ask why their children are not learning English and receive an answer.

In June, when Proposition 227, the "English for the Children" initiative, passes, California's educational system will improve dramatically. We will have eliminated mandated bilingual education, empowered parents, be able to teach in English, saved taxpayer dollars and, most important, we will never again short-change children such as Tony.

Rebuttal: Ford

Ms. Tuchman's story about Tony illustrates the bilingual brigade's stranglehold on California public schools. However, her conclusions that Proposition 227 will (1) eliminate "mandated" bilingual education (when no such mandate now exists), (2) empower parents (indeed, permitting them to *demand* bilingual education, creating a new mandate, or sue), (3) be able to teach in English (*via* a new $500 million entitlement for programs with bad track records), (4) save taxpayer dollars (not according to California Attorney General's Official Ballot Title and Summary), and keep Tony from being short-changed, are a fantasy.

Ron Unz vigorously fought Proposition 187, insisting citizens pay to educate illegal aliens. Unz admits in print his intent to override Proposition 187 with 227. Despite a state legislative counsel opinion to the contrary, many believe 227 will force citizens to educate illegal aliens even if the U.S Supreme Court upholds Proposition 187.

227's cleverly crafted parental-exception waivers empower immigrant parents to demand offspring with various needs be placed in bilingual education programs. Tuchman and Unz say these waiver-loopholes offer students "the option" of an English-language education, giving parents a "choice." The fact is, these loopholes actually codify bilingual education where no federal or state legal mandate

pend on how schools, parents and the state respond to the proposition's changes. *These impacts could vary significantly by district.*" Article 2, Section 305, states that, "*As much as possible, current supplemental funding for English learners [LEPs] shall be maintained...*"

Contrary to Unz appeals to Proposition 227 volunteers that "We Need Your Help to End Bilingual Education in California in June 1998," he says in the *San Francisco Chronicle*, that Proposition 227 "will provide the *option* of an English-language education ..." Campaign co-chairman and former MALDEF activist Gloria Matta Tuchman, concurs, noting "This initiative will empower them [immigrant parents] to make a choice .... it allows for parental exceptions and even gives the parents the right to bring a lawsuit against those that would deny them access."

The Troj-Unz Horse Initiative

Proposition 227 won't end bilingual education: it codifies it and is an end-run around Proposition 187. It creates a new half-a-billion-dollar tax grab for adult immigrants, militant ethnic advocates, and bureaucrats. It empowers immigrant parents — accountable to no one — to force districts to offer bilingual programs, and creates *de facto* preference-based school vouchers. Vote No on Proposition 227.

Rebuttal: Tuchman

In 1974 Congress passed the Equal Educational Opportunities Act, formally recognizing for the first time that "lack of fluency in English serves as a 'barrier' to equal education opportunity." The law states that an educational agency is in violation if it "fails to take appropriate action to overcome language barriers that impede equal participation by all students in its programs." All federal court decisions regarding limited English proficient students have been based on this act. For this article's purpose *Castaneda vs. Pickard* (1981), a case that involved an analysis to determine whether a school district was in compliance with the EEOA, is the most relevant.

Teaching methods used in California that qualify under *Castaneda* are: transitional bilingual education (primary language instruction), bilingual/bicultural education, structured immersion, developmental bilingual education, and English as a Second Language (ESL). A district using any of these approaches has complied with the first requirement of *Castaneda*.

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Ford

now exists, contradicting a plea for support in Proposition 227 promotional flyers: "We Need Your Help to End Bilingual Education."

Waiver-loopholes permit just 20 immigrant parents to force a school to offer bilingual classes in whatever language, or transfer students to "a public school in which such a class is offered." The result? *De facto* preference-based vouchers — violating Proposition 209. If Proposition 227 passes, taxpayers will foot the bill for curricula in the language of choice — at a potentially huge cost — while English-speaking children will have no choice but to make do with whatever education dollars remain.

Proposition 227's $500 million cash cow for "adult English-language instruction to parents or other members of the community who pledge [?] to provide personal English language tutoring to California school children" funnels yet more tax dollars to potential illegal aliens, with no accountability for who receives, or how they spend, those monies. In the past, the Department of Education has distributed immigrant adult dollars to open-borders militants and educrats who spent them on questionable activities. Ms. Tuchman, how does a $500 million entitlement for adult immigrants end bilingual education "for the children"?

Tuchman claims that Proposition 227 will save taxpayer dollars, yet the Attorney General's Official Ballot Title and Summary, states : "Total state spending on education, however, probably would not change." (This does not include the *additional* $500 million for adult immigrants or $1.5 billion for illegal aliens.) The AG summary discretely acknowledges the potentially astronomical costs of waiver loopholes, noting: "Impacts on individual school districts would depend on how schools, parents, and the state respond to proposition's changes. These impacts could vary significantly by district " [emphasis added].

Tony, his English-speaking classmates, and every California citizen-taxpayer will be short-changed if Proposition 227 passes. Vote No on Proposition 227! CPR

Tuchman

Proposition 227 limits all California schools to just one method, English immersion, and meets the requirements of federal law.

When Proposition 227 passes, districts such as Los Angeles, San Francisco, and Santa Ana will be unable to use the *Castaneda* decision to validate continued support of failed bilingual programs.

Proposition 187 End-Run

First, to set the record straight, I was a strong, enthusiastic supporter of Proposition 187. Second, Proposition 227 is not an "end run" around 187. It was written to withstand MALDEF and ACLU court challenges after passage in June. Proposition 187 is tied up in court because it included the issue of not educating "all" children. Proposition 227 will not be overturned in court on the same technicality.

$500 million Funds "Adult Immigrant Education," anti-American Groups, and Voter Drives

According to the state's legislative analyst and director of Finance, the initiative saves $400 million in education tax dollars per year. There is no impact on K-12 spending because the savings revert to the schools. $50 million a year is allocated for 10 years to fund adult English-literacy programs for immigrants and non-immigrants alike who agree to help tutor children in English. The dollars for the English literacy tutorials will be "disbursed at the discretion of the local school boards, under reasonable guidelines established by, and subject to the review of, the state Board of Education," not the state *Department* of Education. These tutorials are not "tax grabs"; they will be "tax savers" as the English proficiency of California's diverse population increases.

MALDEF Activist

Regarding the allegation I was an activist member of MALDEF, Mr. Ford goes beyond the pale. I served on a bi-partisan Leadership Advisory Group in Orange County to promote Latinos to appointed or elected positions. Gaddi Vasquez, a Republican, a former Deukmejian appointee, and a member of the Orange County Board of Supervisors, chaired this group. At the same time I served on the board of U.S. English. Never have I been a member of MALDEF.

And yes, I am a firm believer in parental choice and parental empowerment. That is why I suggest parents sue a school district when instruction in English is denied their child. Proposition 227 is about teaching our children to read, write, and speak in English. Proposition 227 is about education, not personalities, not immigration, and not litigation as Mr. Ford seems to believe. CPR

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McKinney

(Continued from page 18)

restricted to Venice. In March 1995 Redondo Beach City Clerk John Oliver became concerned after an election in nearby Long Beach was nullified because of illegal voter registrations. Redondo Beach was about to hold a city election of its own. So Oliver asked that any sample ballots his city mailed out prior to the election that came back to the post office as "undeliverable" be forwarded to him. He received more than 3,900 "undeliverables" and issued a warning that these possibly illegal voters would be queried if they voted in the city election; only 150 did so. But, checking back, it was found that in the November 1994 general election, more than *1,100* of the 3,900 had voted. Hmm.

Meanwhile, Bea Valdez, taking a page out of the Clinton guide to stonewalling, played "hide-the-ball" with the Republican-led Congress, refusing on April 10, 1995, to release public records of the election results to the congressional task force, claiming "it would be a hardship at this time to assign staff to take documents out of storage."

The *Wall Street Journal* noted at the time that "no one's alleged that Representative Harman's campaign orchestrated a fraud." Well, perhaps some district attorney or attorney general should have done so, and launched an investigation, including a hard look at the LA County Democrat Party and Democrat officials like Bea Valdez. Liam Weston suggested to me the Democrats chose the 6th Street vicinity of Venice for their most blatant shenanigans because they figured "white Republicans wouldn't go into such an area." CEI's grim determination "panicked them." But in the end, everything worked out for the Democrats.

Republican "moderates," spooked by the Democrats' and their media pals' dreaded accusations of "partisanship," whined and wailed until the Republican leadership urged Brooks to drop her contest, which she agreed to do. The leadership told Brooks "the Democrats know we'll be watching them in 1996" — she could run again that year and beat Harman, using vote fraud as an issue. Naturally, after allowing the Democrats to get away with stealing the election, in 1996 Republican Congressional leaders reneged on their promises, failing to help Brooks make vote fraud a campaign issue. She lost again to Harman.

John Shallman went on to manage Sanchez' '96 campaign. While *Hermandad's* leader Nativo Lopez was working to get hundreds of noncitizens registered in Dornan's district, he asked Shallman, according to Shallman's sworn deposition to the congressional task force investigating Dornan/Sanchez, for money in exchange for delivering votes. Shallman says he told no one about Lopez' offer until forced to in his deposition because he "was never directly asked." Maybe in 2000 he'll help Al Gore raise money from Buddhist nuns, Macau mobsters, and Chinese Communists.

I told House Republicans in 1995, after hearing of their pressuring Brooks to drop her election contestation, that the message the Democrats would get wasn't that they'd best be careful about vote fraud, but that Republicans wouldn't do anything if elections were stolen. Judging by their vigorous efforts to first prevent and then derail House and Senate investigations of Sanchez' and Mary Landrieu's Louisiana Senate elections, the Democrats understood the message exactly as I predicted they would — and correctly, as it's turned out for Dornan. CPR

Ferrier

(Continued from page 16)

ranks it as the fourth and least important cause of Bordonaro's defeat. Giardiello thinks it was a plus. Representative Tom DeLay, according to the *Washington Post*, buys the media spin and gave Bauer and Focus on the Family's James Dobson a post-election tongue lashing over it in Washington.

The way Bordonaro played partial birth was in some ways reminiscent of the Dole campaign's ineptitude on CCRI in 1996, when Dole seemed ashamed of his own principles. Not only did he fail to benefit from Proposition 209, he probably managed to lower its margin of victory. Ironically, Firestone had behaved like Dole on 209. He gave it a tepid endorsement, played down the issue, and tried to curry favor with the university crowd and the media, doing nothing to help the initiative, which carried his district handily. And Bordonaro's handlers made nothing of the preference issue even though Democrats (and liberal Republicans) are blocking federal anti-race preferences legislation in Congress.

Social issues like preferences and abortion are the continuing missed opportunities for Republicans. If they handle them energetically and confidently, with a positive message, as was done in the 209 campaign, they can win. Gary Bauer is no fanatic or demon; he is a perfectly presentable public figure. The public's stance on partial birth is wildly favorable to Republicans like Bordonaro. More than 20 state legislatures have banned partial birth abortions, most recently Florida's, over a Democrat governor's veto. And Bauer's ads will be back in November, as will candidate Bordonaro, who is the only serious Republican on the June primary ballot in the 22nd. Maybe next time he, and Schroeder, will get it right. CPR

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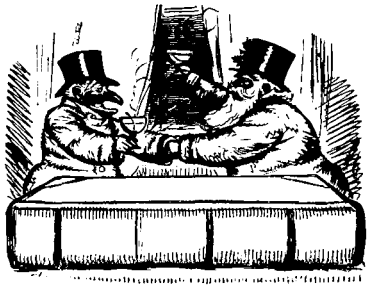

CRITICUS

Naming Names

(An Apology)

BY G.B. TENNYSON

"THE NAMING of cats is a difficult matter,/It isn't just one of your holiday games," wrote T.S. Eliot at the beginning of the playful collection of verse that would long after his death be turned into the world's most successful musical. As with so much that is jocular on the surface, there is a serious dimension to Eliot's thought in these lines. Even before He took Adam's rib to fashion Eve, God created the animals to be Adam's companions and brought them "before Adam to see what he would call them." Thereupon "Adam gave names to the cattle, and to the fowl of the air, and to every beast of the field." Later, faced with expulsion from the Garden, Adam, in what seems an afterthought, named Eve, presumably operating on an implicit extension of the right God had given him to name all other living creatures. This right in turn was obviously passed along, as the exiled Cain named his son (Enoch) and Eve named her third son (Seth). Now everybody was into the naming business. Ever since, humankind has been busy naming. And sometimes unnaming.

The first geographical or place name given by humans, according to Genesis, was Enoch, named by Cain who "builded a city and called the name of the city, after the name of his son." So the first place name was the name of a person, and persons have figured prominently in place names ever since. Other kinds of place names seem to be easy matters. Places will be named after physical features (Clear Lake, Stone Mountain), or remembered events (Battle Creek), or imagined remembered events (Lover's Leap), or in America often after names brought over from the old country (Winchester, Versailles), or adapted from old country names (New Jersey, New Ulm), or as remembrances of the old country (Holland, Portuguese Bend), and of course after Indian names (Potomac, Dakota). Oh, they may be odd enough. In another context some time back, as Constant Readers will recall, I had occasion to refer to that once well-known poem by Stephen Vincent Benét titled "American Names," the first stanza of which reads:

> *I have fallen in love with American names,*
> *The sharp names that never get fat,*
> *The snakeskin-titles of mining-claims,*
> *The plumed war-bonnet of Medicine Hat,*
> *Tucson and Deadwood and Lost Mule Flat.*

The poem, which dates from between 1915 and 1930, is not only a glorification of American place names but also an explicit assertion that they are superior to European names. Whitman and Twain are in the ascendant here, not Henry James. "Seine and Piave are silver spoons," writes Benét, "But the spoonbowl-metal is

G.B. Tennyson has been naming names in the UCLA English Department for many years. It has done him no good, but it has sparked many requests for apologies. He is now on assignment as CPR's *European correspondent.*

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thin and worn." In all, for a total of seven stanzas Benét sings the praises of names freed from the European yoke, evidently unaware of, or choosing to ignore, the fact that countless American names are European transplants. For example, he specifically cites the glory of the name Boston, but that existed first in Lincolnshire, England, and of Carquinez Straits, which has a suspiciously Spanish sound to most ears. He also specifically disdains the foreignness of Sussex, which should have displeased residents of the several American places that bear the name. Reading the verses today, one wonders if Benét knew what he was talking about. No matter; few remember the poem now. The one remnant of it in the contemporary popular mind is its final line, though few there are who know it as such; rather it survives as the title of a book, *Bury My Heart at Wounded Knee.* The author of the book, Dee Campbell Brown, uses the final two lines of the poem as an opening epigraph, identifying Benét but not the title of the poem, and the last line as the title of a study of American Indian history. This renders the phrase now closer to a reproach than to the romantic exaltation Benét intended.

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STILL, READERS at the time of "American Names" would have responded warmly to the patriotic sentiments Benét was expressing and would not have blanched, as present day readers might, at the line in the poem that uses what is now demurely called the N-word. They would also have responded positively to a similar and also formerly well-known poem by the Dutch-surnamed Henry van Dyke, titled "America for Me," which Criticus, aged about ten and already living in a time-warp, once recited for a school assembly to tumultuous applause, or at least a favorable reception. Much of it has fled the chambers of memory, but some abides:

Oh, it's sweet to dream in Venice and it's great to study Rome,
But when it comes to living, there's no place like home.
So, it's home again and home again, America for me,
My heart is turning home again, that's where I long to be,
In the land of youth and freedom beyond the ocean bars,
Where the air is full of sunlight and the flag is full of stars.

If I have misquoted, don't tell me. Let it stand as what may be the last tip of the hat to the once eminent van Dyke, who was incidentally a Princeton professor and clergyman who served (1913-1916) as ambassador to the Netherlands and Luxembourg and whose complete works run to seventeen volumes. *Où sont les neiges?*

If Benét and van Dyke give through verse an immediate sense of the once dominant passion for America and its places, the popular *locus classicus* for appreciating American places remains the magisterial *Names on the Land* by George Stewart. This lengthy prose compendium first appeared in the final year of the Second War (1945) and was several times reissued up until 1967. There was even an Armed Services edition, appropriately so, for the book is distinctly patriotic without in any way compromising accuracy. Stewart traces the naming of virtually every place in the United States from the Indians and the early Spanish, English, and French explorers to frontiersmen to settlers to modern committees and official naming bodies like the U.S. Board of Geographic Names. He shows how names tamed the land and made it belong to the people and the people to it. Like van Dyke, Stewart was an academic, starting at Princeton and ending at Berkeley. But his intellectual enthusiasms seem very remote from those that now reign in the academy and among the chattering classes where all inquiry is colored by race, gender, class, and ideology.

That includes names. Recently an elementary school in New Orleans was subjected to a name change based on a local school board policy from 1992 that decreed, in the words of the *Washington Post,* "that any schools in the majority black district that were named for former slave owners or others who did not respect equal opportunity for all would be renamed. The system has since changed the names of two dozen schools." One

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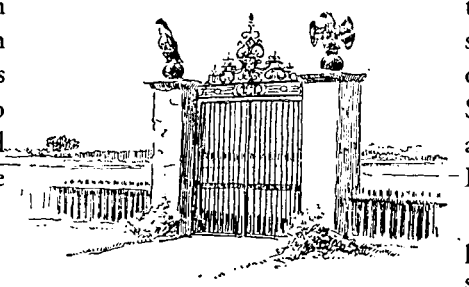
such change involved a school scandalously named for the first president of the United States, who, the *Post* thoughtfully reminds us, "owned slaves." Contrast such sentiments with what Stewart writes about the Washington name legacy, which began in New York with Fort Washington and Washington Heights as early as 1776 and "after that there was no ending for the name of the man had come to stand for the hopes of the people." Further:

> On the two hundredth anniversary of his birth the roll of these places was taken, and they were more than could be surely counted — a state, thirty-two counties, 121 cities and towns and villages, 257 townships, ten lakes, eight streams, seven mountains. Of streets there were counted 1,140, and others uncounted, and besides these there were schools and colleges, buildings, districts, monuments, ferries, bridges, forts, parks, and other features — a tribute of names such as has been paid to no other man, in any country.



In the state known as the Mother of Presidents debate is raging over school and place names that commemorate the politically incorrect.

Well, of course, that was then.

Washington certainly leads the van, but the places named after other slave-owning presidents also constitute a prodigious number. And what about those of other slave owners even if not presidents? What about those who fought for the Confederacy? Those who supported slavery or segregation? Down with Taneytown, Maryland (Justice Taney rendered the infamous *Dred Scott* Decision). Begone Jefferson City, Missouri. Farewell all ye Madison Counties (and your bridges too). Be cursed and anathema, Washington and Lee University (double a dreadful name!). Above all, let us rename the nation's capital after someone worthy. Marion Barry City. Al Sharptonville. Jesse Jackson Junction. And the winner is — Hilary Rodham Clinton Town.

You jest, O Criticus. Well, only a bit. In the state known as the Mother of Presidents (the first being Washington himself) debate is raging over school and place names that commemorate the politically incorrect. In Petersburg an elementary school named after a white businessman was renamed for one Vernon Johns, described as "a black preacher who once lived in Petersburg." In Richmond two bridges being renovated will be given new names. They had been named after Stonewall Jackson and J.E.B. Stuart; they will be given names to be determined by the Black History Museum and Cultural Center of Richmond. A survey revealed that at least 51 Virginia public schools are named after slave owners or Confederate heroes, six each after Stonewall Jackson, Thomas Jefferson, and Patrick Henry, five after Robert E. Lee, four after J.E.B. Stuart.

One Salim Khalfani (now there's a potential school name for you), spokesbeing for the Virginia NAACP, rejects the notion that history should be preserved, at least if it's history he doesn't like. Arguments about the culture of a previous era as justification for existing names are old and tired, announced Khalfani. "Names do send a message," he said. Quite. Which is why this name changing is a form of rewriting history. Even place names send messages. Think of the exclusive, rich, white associations of names like Brentwood and Beverly Hills. It's time for Los Angeles to follow Petersburg's lead and rename Brentwood School the O.J. Simpson School. Many will remember that he once lived in the area. Beverly Hills could follow. The high school could be renamed Monica Lewinsky High School (the teams to be known, of course, as the Knee Pads). And in East L.A — no, there already is a César Chavez Elementary School.

THE CHANGING Name Game is an aspect of another bizarre sign of our times — the Apology Game. This has grown prodigiously in recent years and shows no sign of ending. We have seen President Priapus tootle 'round Africa in one of his distract-the-American-public capers distributing apologies, or hemi-demi-semi apologies wherever he lighted, even if only for a few hours, as was the case in Rwanda. There he managed to apologize for having permitted the Hutus to practice genocide on the Tutsis. No comparable word seems to have gone out from the Hutus themselves, but, then, they are not white. Of course Priapus also almost apologized for the slave trade and slavery itself. Poised at the open doorway of no return on Goree Island off the coast of Senegal, where slaves were shoved onto ships for the Middle

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Passage to the New World, the president bewailed the sins of "European Americans" for their involvement in this traffic. Left unclear was whether among European Americans President Zipper intended to include Caribbean and Brazilian Americans, the latter distinguished for having abolished slavery well after it was abolished in the United States. And of course no word from him or his African hosts about the involvement of Africans in this same trade, they being the providers of the slaves in the first place and the inhabitants of the only continent on which slavery is still practiced today.

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APOLOGIZING FOR slavery is particularly appealing because it is sufficiently remote as to be relatively non-specific. Who is it, really, who is doing the apologizing? The scion of Trailer Trash whose ancestors very surely never owned slaves? And in whose name? That of contemporary white Americans the vast majority of whom descend from European immigrants who came to the United States after the abolition of slavery? It doesn't matter. This is a feel-good maneuver connected only to image. It is also catching. The British prime minister, Mr. Blair, has apologized to the Irish for the potato famine when if anything he should be apologizing to the United States for having given us the Kennedys. Besides, experts tell us that the potato blight was caused by a fungus that even perfidious Albion was incapable of knowing about and disseminating in the 1840s. The Japanese have more or less apologized to the British for their wartime treatment of prisoners of war, though surviving veterans were not appeased by the mealy-mouthed character of the statement. Not to be outdone the British are considering more or less apologizing for having executed more than 300 of their own soldiers in the Great War for the crimes of desertion or cowardice. (Just think how useful such a procedure could have been in the U.S. during the Vietnam War if applied to draft dodgers, even if it might well have meant a President Dole instead of the one we have.) The Anglican clergy of Australia have apologized to the Aborigines for having taken many of their children from them to be brought up by whites. Or was that the Australian government itself? In any case Australian clergy, evidently of several denominations, along with feminists have made amends to older women by instituting a religious ceremony called "croning" whereby women are honored when they turn 60 and pronounced to be, well, crones. They have even published their "croning liturgies" in a series of books, which, alas, Criticus has not seen. However, one can imagine beguiling new forms of address: "Hail, Crone!" "O Crone!" "Aged Crone!"

Continuing with this ludicrous litany we note that the Swiss have not exactly apologized for daring to be neutral during the Second War but they have agreed to pay money for having profited from trade. The West Germans, of course, have been apologizing to everybody for half a century now and paying endless reparations. Having taken on the unrepentant, Deutschmark-draining East Germany, that German reparations milch cow may now be drying up. One shudders to think what will happen when it becomes known that they have named a street in Berlin after Herbert von Karajan. Even more alarming, what will happen if they follow the growing sentiment not to go through with the planned Holocaust memorial project in the center of the once and future capital? These latest twists have been overshadowed in the media by the qualified apology from the Vatican for an unspecified degree of guilt and complicity by Christians in the persecution of the Jews in WWII. Like so many apologies, the Vatican one has been held to be too little and too late by those apologized to.

THE REJECTION of apologies is becoming increasingly common, so it is comforting to find two instances in which apologies have been accepted. The makers of the movie "Titanic" were rightly reproached for having misrepresented to the point of slander the conduct of a ship's officer named William Murdoch. He is portrayed, as are virtually all the British in that chauvinistic, class-obsessed film, as a coward and a bully. He shoots a steerage passenger trying to enter a lifeboat (evidently we are supposed to admire an Irish tough who doesn't believe in women and children first), and finally shoots himself.

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None of this happened in reality, and Murdoch has long been recognized in his hometown of Dalbeattie in Scotland as a hero who helped many survive the sinking. There is even a public memorial to him. So the filmmakers in a fit of remorse sent a payment to the town along with an apology. The payment from the makers of the 200-million-dollar film that has grossed more than a billion dollars amounted to £5,000 (about $8,000). The townspeople gratefully accepted it. Eat your heart out, Switzerland.

THE OTHER instance of an "accepted" apology is more cunning yet. It concerns the case of Asa Carter who under the name Forrest Carter wrote the best-selling novel *The Education of Little Tree.* This is the tale of an orphaned Cherokee boy who is taken in by his white grandparents in the mountains of Tennessee during the Depression, thereby constituting a mixed race family that exuded charity towards all. Carter had originally claimed that this was a true story, a clever touch. Liberals loved it. But after Carter's death in 1979 the book was revealed to be a fiction and Forrest Carter to be Asa Carter a white supremacist speechwriter for Alabama Governor George Wallace and the author of those memorable words: "Segregation today. Segregation tomorrow. Segregation forever." Because of these unacceptable associations Hollywood was reluctant to make a film out of the story. But they finally did so, and director and screenwriter Richard Friedenberg argued that the story stood on its own. Moreover, Carter being dead and his widow "something of a recluse," Friedenberg claimed that no one could really know whether Carter had remained a racist all his life. Carter had disappeared for some years and re-emerged as an author of books that "sympathetically portray native Americans and depict rich white people and politicians as villains." So that's all right, then. Friedenberg therefore concluded: "I look on [Carter's] literary *persona* as an apology of his previous life." Well done. He's hit upon the perfect apology, one that is inferred and intuited from someone deceased who can never deny or retract it. It also justifies one's making a film from a book by a politically incorrect writer.

All of which leads to a new Critical Modest Proposal. It will at a stroke solve the growing worldwide Apology Problem and the longer-standing problem of what to do with the United Nations. It works like this. The UN should abandon all of its present activities, from its military meddling in other countries' affairs with other countries' troops to its propagandizing through UNESCO, and should be transformed into Apology Central — UNAC for short. Its vast bureaucracy can devote its time to processing requests for apologies from all over the world and determining the nature, extent, and wording of the apologies to be issued. Following the example of the Asa Carter "apology" the UN could also undertake to issue apologies from persons and nations now dead and gone. There will be committees aplenty to process these things, but much work will also be done in the debating chamber, which will occupy delegates indefinitely. When an apology is finally settled on, the UN will proclaim it. No need to get approval from the country, group, or person apologizing. That can be delegated and/or assumed to lie within the power of the UN itself, as Adam's naming right transferred automatically to Eve and on to Cain and down to Salim Khalfani. Compared to relinquishing sovereignty, as the current UN seeks to have nations do, this is cheap. At the new UNAC there could be annual ceremonies at which the text of the apologies would be read aloud, songs sung, flags raised and lowered, offenders pilloried in effigy — an entire ritual could be devised by Australian clergy working with Certified Crones. It will not take long before the entire UN apparatus is occupied with processing apologies. All those unidle hands should keep the Devil away.

AS A FIRST step and *pour encourager les autres,* Criticus offers some apologies that could be endorsed by the reconstituted and revitalized UN. Bearing in mind that nothing is too momentous or too trivial for an apology, the following could apologize: The Turks for the Siege of Vienna ... The Supreme Court for allowing women into VMI ... Africa for creating killer bees and AIDS ... France for producing Descartes ... *and* Voltaire ... Israel for taking the Palestinians' land ... The Palestinians for trying to take it back ... Toussaint L'Ouverture for creating modern Haiti ... The twentieth century for being the bloodiest in history ... The North for not permitting self-determination to the South ... Jane Fonda for being a common scold ... Feminists for not being scold enough *vis-à-vis* President Grope ... The Allies of WWI for dethroning the Hapsburgs ... Rap musicians for their "music" ... The NEA for not educating ... The Democrats for being socialists ... The Republicans for being Democrats ... Churchill for the bombing of Dresden ... Al Gore for niggardliness ... Academics for using Common Era instead of A.D. ... Dr. Laura for cutting off callers in mid-sentence ... Hillary for not razing her village in private ... Rome for dropping the Latin Mass ... Canterbury for modernizing the BCP ...

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The harpy in the green Mercedes for stealing my parking place ....

Clearly I'm just getting started. Despair not if your favorite apology is missing. We should all make lists. Yours could even require Criticus to apologize for his suggested apologies. Or for this column. UNAC will need to be kept busy. The one forbidden category, if Criticus has his way, is parents, as they have already been blamed for everything. So, Constant Readers, begin compiling your own lists against the day when the UN becomes UNAC. Send them to the editor of this journal who will have his own name for such an undertaking. We must hope that it is not the Deplorable Word of C.S. Lewis's *Magician's Nephew* that, once uttered, brings total destruction to the world around it, nor even like one of those politically correct, new-fashioned school names that bring simply woe and dismay. Instead it should be like a cat's third name. That is, Old Possum tells us, "the name that no human research can discover," the name that only "the cat himself knows, and will never confess." That way August Editor need never make any apology for it. CPR

BOOKS

Getting it Wrong on CCRI

BY DAVID F. FAUSTMAN

IF THE title of this book referred to the battle to end "racial preferences" (the term used in Proposition 209) rather than "affirmative action" (the feel-good euphemism for racial quotas), and if the first seven words of the book were not "Life is not a level playing field," and if the title of the first substantive chapter were not "Angry White Males," the reader might be able to give some credence to the publisher's claim that this book about the California Civil Rights Initiative of 1996 is "even handed" and "balanced." But, alas, the author, an associate professor of journalism at U.C. Berkeley, is so hopelessly mired in the misplaced romanticism of the civil rights movement of the '60s that she fails to recognize that aspects of that movement metastasized in the '80s into a racial spoils system that violated civil rights. As the feminists love to say, "she just doesn't get it."

The book is largely a narrative chronology of a victorious initiative campaign in which a nasty bunch of disingenuous, angry white males (and Ward Connerly) outspend and outflank a noble bunch of selfless civil rights activists, and hoodwink a landslide majority of California voters into ending "affirmative action." The author says she wrote the book to answer the question: "Why did a linchpin of the civil rights movement become unpopular and politically vulnerable?" It apparently never occurred to her that the answer to the question might be: "Because it was wrong." Chavez simply cannot comprehend that people of good will could come to the conclusion that racial preferences — whether soft-pedaled as "affirmative action" or starkly exposed as "quotas" — are simply inconsistent with American ideals.

The Color Bind
California's Battle To End Affirmative Action

by Lydia Chavez

University of California Press, 1998, 305 pages, $16.95, paper

The author's view foreshadowed the laughable opinion by Federal Judge Steven Reinhardt who struck down Proposition 209 on the astoundingly ridiculous ground that the voters could not possibly have known what they were doing. Reinhardt's jurisprudential nonsense was quickly, and deservedly, dispatched to the trash bin by the full Ninth Circuit Court of Appeals in upholding the initiative.

The Color Bind does include considerable detail about the machinations of an initiative campaign. Political junkies will enjoy the wealth of inside dope on both

David Faustman is a practicing attorney who writes on legal, business and political issues.

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sides of the battle. Chavez does a good job of documenting the ups and downs within the opposing camps. The struggle for money to feed the media campaigns is particularly compelling. The description of competing television strategies is also worthwhile. Chavez lamentably describes how the wheels finally fell off the wagons of the No on 209 team as it stumbled forward to final defeat.

THE AUTHOR'S profound sympathy for the losers is transparent. She even questions the legitimacy of California's version of direct democracy. "[T]he initiative process ... permits wealthy special interest groups to bypass the deliberate process and change laws in their narrow interest." Racial preferences, however, were never the product of "the deliberative process." "Affirmative action" was invented by liberal activists, and imposed by administrative fiat, beginning with Lyndon Johnson's executive order imposing "goals and timetables" on government contractors. The University of California's race-based admission policies, blatantly discriminatory against whites and Asians, would never have survived "the deliberative process." The author exhibits only an amateur's grasp of the history of "affirmative action" and of the Supreme Court's tortured treatment of the issue.

The book is laced with *non-sequitur* cheap shots at, and sophomoric psychoanalysis of, the Yes on 209 crowd. Arnie Steinberg lives in "a mansion in Malibu." Scott Taylor has meetings in limousines. Ward Connerly is "narcissistically disordered." Pete Wilson failed the bar exam four times. Glynn Custred and Tom Wood, who co-authored CCRI, are described as an angry, misguided academic and a disgruntled job seeker respectively.

Chavez simply cannot comprehend that people of good will could come to the conclusion that racial preferences — whether soft pedaled as "affirmative action" or starkly exposed as "quotas" — are simply inconsistent with American ideals.

The No on 209 crowd, however, is apparently not possessed of any complexities or contradictions. The hero-worship of these folks is palpable. Eva Paterson is "a large dramatic woman with the oratorical skills of an ordained minister [who] provided legal services to the poor ... and co-founded a shelter for battered women." David Openheimer, a law professor, "always returned calls when someone in the civil rights community needed an extra hand." Jan Adams, an organizer for farm workers and "gay and lesbian causes" was "still willing to put in fifteen hour days." Constance Rice of the NAACP was "devastating in debate and compelling from the pulpit." Molly Munger was "tall, open, and warm." Ramona Ripston of the ACLU has "laid back charm and the looks of a movie star." The Beverly Hills feminists who contributed sizeable portions of their ex-husbands' show business fortunes to the No on 209 effort "were the kind of women others noticed. When they met at a restaurant to drink coffee and plan, they radiated energy." One can almost hear the author's heart go pitter-patter when she describes Anthony Thigpen, a "self effacing and committed" former Black Panther, "six-feet-four and lithe as a basketball player," who "headed to the Montana mountains to clear his head" after the defeat. Charges of hypocrisy and disingenuous tactics are largely reserved for the Yes side. The author does not even hint that the No side might include a self-serving element that was only interested in preserving an undeserved entitlement to jobs, money, and potentially corrupt patronage.

The author does deserve credit for admitting that she personally has "a beneficiary's stake in the system" of racial and gender preferences. She readily admits that her job at Berkeley, and thus access to her publisher, "were assisted" by affirmative action. One can only wonder whether the guy who didn't get the job could have written a better book. CPR

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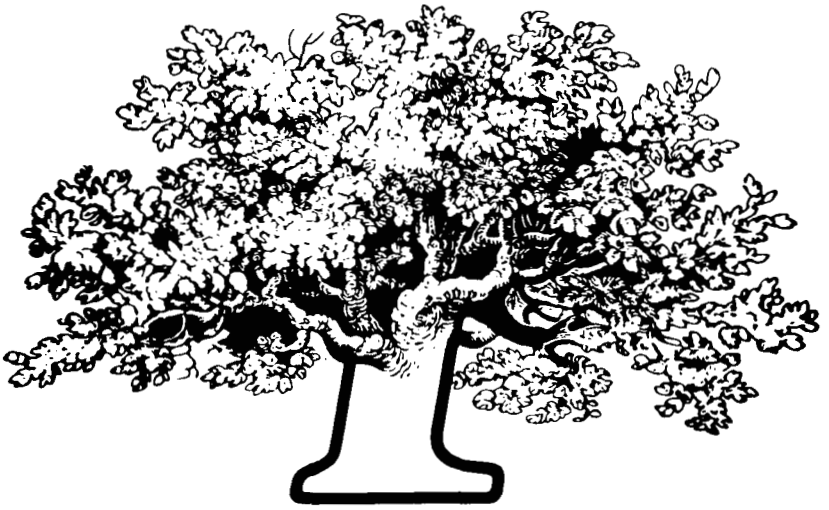

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